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United States  
Circuit Court of Appeals  
For the Ninth Circuit.

WILLIAM L. HUGHSON,

Appellant,

vs.

UNITED STATES OF AMERICA,

Appellee.

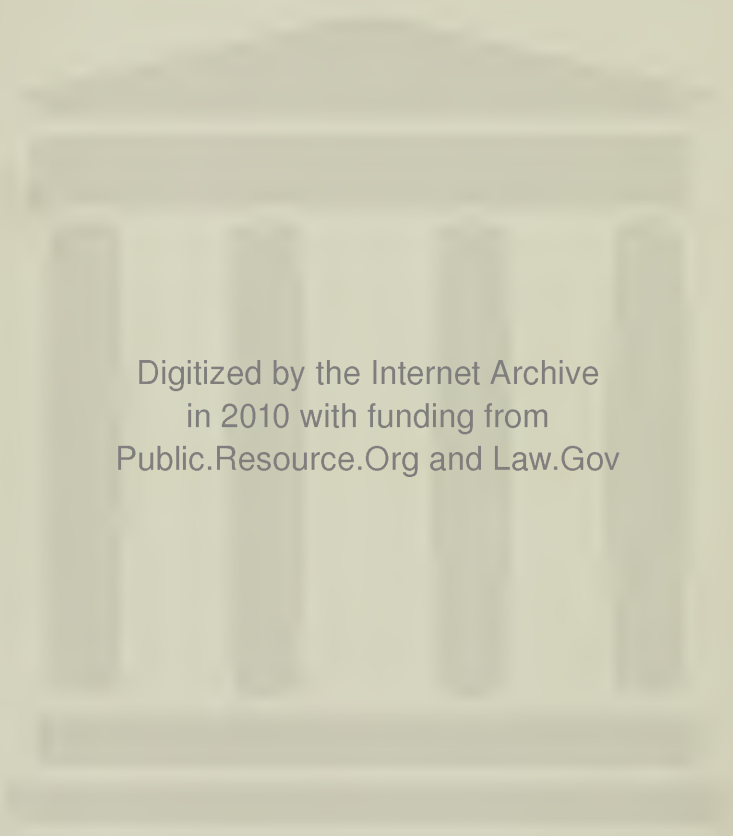
Transcript of Record.

Upon Appeal from the United States District Court for the  
Northern District of California, Southern Division.

FILED

NOV 10 1931

PAUL P. O'BRIEN,  
CLERK



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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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OF RECORD.

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In the United States District Court for the North-  
ern District of California, Southern Division.

No. 18,880-L.—LAW.

UNITED STATES OF AMERICA,

vs.

Plaintiff,

CARL A. HADER and WILLIAM C. HUGHSON,  
Defendants.

COMPLAINT TO RECOVER UPON A BOND  
GIVEN FOR INCOME TAXES.

The plaintiff, United States of America, by its  
attorney, George J. Hatfield, United States At-  
torney for the Northern Judicial District of Cali-  
fornia, in this action at law, complains of the above-

named defendants, and for cause of action alleges, upon information and belief:

## FIRST CAUSE OF ACTION.

### I.

That plaintiff was at all times hereinafter mentioned and now is a corporation sovereign and body politic.

### II.

That the defendant Carl A. Hader is an individual, citizen of the United States of America, inhabitant of the State of California, and a resident of the City of San Francisco, in the Northern Judicial District of said State and within the jurisdiction of this court; that [1\*] Carl A. Hader, defendant above mentioned, is one and the same person as C. A. Hader, who executed as principal the instruments in writing upon which this suit is predicated.

That the defendant William L. Hughson is an individual, citizen of the United States of America, inhabitant of the State of California, and a resident of the city of San Francisco in the Northern Judicial District of said state and within the jurisdiction of this court; that the said defendant above mentioned, William L. Hughson, is one and the same person as W. L. Hughson, who executed as surety the instruments in writing upon which this suit is predicated.

### III.

That this is a suit by the United States of America, of a civil nature, at law, founded on contract

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\*Page-number appearing at the foot of page of original certified Transcript of Record.

arising under the internal revenue laws of the United States, and is authorized and sanctioned by the Attorney General of the United States, at the request of the Commissioner of Internal Revenue.

## IV.

That on, to wit, March 15, 1921, the defendant Carl A. Hader, pursuant to an Act of Congress entitled "An Act to provide revenue and for other purposes," approved February 24, 1919, filed in the office of the Collector of Internal Revenue for the First District of California, at San Francisco, California, his individual income tax return for the calendar year 1920, disclosing a tax liability due from said defendant to the plaintiff in the amount of One Hundred Thirty-six and 25/100 (\$136.25) Dollars, which amount was duly assessed and paid.

## V.

That thereafter the Commissioner of Internal Revenue, in accordance with the internal revenue laws and the rules and regulations duly prescribed and promulgated relative thereto, duly examined the income [2] tax return of said defendant for the calendar year 1920, and such other information as was before him in the matter, and found and determined therefrom that the income tax liability due from said defendant was greater than the amount shown to be due by his return to the extent of One Thousand Two Hundred Eight and 02/100 (\$1,208.02) Dollars, and further found and determined that said defendant's return for the year 1920 was fraudulently made and that by reason

thereof there was due in addition to the tax a fraud penalty in the amount of Six Hundred Four and  $\frac{1}{100}$  (\$604.01) Dollars, making a total amount due of One Thousand Eight Hundred Twelve and  $\frac{3}{100}$  (\$1,812.03) Dollars, which was duly assessed by said Commissioner of Internal Revenue on the May, 1925, Special No. 9 income tax assessment list, page 0, line 0. That the Collector of Internal Revenue at San Francisco, notified said defendant of said assessment and made demand for payment thereof on, to wit, May 15, 1925. That on, to wit, May 18, 1925, J. G. Bright, then Deputy Commissioner of Internal Revenue, notified said defendant, in writing, that said assessment had been made in accordance with the provisions of Section 274 (d) of the Revenue Act of 1924, and informed him further that under Section 279 (a) of the Revenue Act of 1924 he was privileged to file a claim for abatement of the assessment within ten days after notice and demand for payment, and that any such claim should be accompanied by a bond.

## VI.

That upon receipt of said communication from then Deputy Commissioner J. G. Bright the said defendant filed an appeal with the United States Board of Tax Appeals in an attempt to get his tax liability redetermined.

That thereafter on, to wit, June 8, 1925, the said defendant executed a claim for abatement of the above-mentioned additional assessment and filed the same with the above-mentioned Collector of Internal Revenue on, to wit, June 25, 1925. [3]

## VII.

That subsequently on, to wit, August 18, 1925, in consideration of the aforesaid Collector refraining from enforcing immediate payment of the tax assessed as aforesaid, the defendants, Carl A. Hader and William L. Hughson, executed a bond, and delivered same to said Collector, signed by them with the names C. A. Hader, principal, and W. L. Hughson, surety, wherein and whereby they firmly bound themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, unto the United States of America for the payment of the sum of Three Thousand Six Hundred Twenty-four and 06/100 (\$3,624.06) Dollars, lawful money of the United States, which said bond contains the following condition, to wit:

“NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1920 as may be found due by the Commissioner, plus all penalties and interest, in accordance with the terms of the extension granted, and shall otherwise well and truly perform and observe all of the conditions of law and the regulations, then this obligation to be void, otherwise to remain in full force and effect.”

A copy of said bond is attached hereto, made a part hereof the same as if fully rewritten at length herein, and is marked Exhibit “A” for identification.

## VIII.

That thereafter on, to wit, November 17, 1925, the United States Board of Tax Appeals made an order dismissing the appeal of Carl A. Hader, Docket No. 5226, above mentioned, for lack of jurisdiction. That by virtue of said action of the Board of Tax Appeals the assessment above referred to remained unmodified, unchanged and of full force and effect. That on, to wit, December 9, 1927, D. H. Blair, then Commissioner of Internal Revenue, informed the defendant Carl A. Hader, by letter of that date, that his claim for abatement hereinbefore referred to had been considered and was rejected for the full amount thereof, namely, One Thousand Eight Hundred Twelve and 03/100 (\$1,812.03) Dollars, and further advised the defendant that he was authorized by law to appeal from said determination to the United States Board of Tax Appeals if he [4] was not satisfied. The defendant, however, did not take an appeal to the United States Board of Tax Appeals from the Commissioner's determination of the claim for abatement, in which he determined that the assessment was due and owing from said defendant. Thereafter on July 14, 1928, the defendant William L. Hughson was advised by the Collector aforesaid that the defendant Carl A. Hader had failed to pay the tax liability secured by the aforesaid bond, and demand was simultaneously made upon said defendant William L. Hughson for payment of the amount due. At various and divers other times demands have been made upon both of said defendants, yet they and each of them have wholly failed, neglected and re-

fused to pay any part or portion of the amount due under and by virtue of the aforesaid bond.

### IX.

That the plaintiff has done all things required of it to be done under and by virtue of the terms and conditions of said bond, yet the defendants have wholly failed, neglected and refused to pay the amount due, in accordance with the terms of said bond, whereby they have breached the condition of their said bond and the promise thereof and therein contained has become and now is absolute, and there has accrued to the plaintiff an action to demand and have of said defendants and each of them on said bond the sum of One Thousand Eight Hundred Twelve and 03/100 (\$1,812.-03) Dollars, with interest thereon at twelve per cent per annum from May 15, 1925, the date of first notice and demand for payment of the tax liability, as by law provided.

WHEREFORE, the plaintiff, United States of America, prays judgment in this cause of action against the defendants, Carl A. Hader and William L. Hughson, and each of them, for the sum of One Thousand Eight Hundred Twelve and 03/100 (\$1,812.03) Dollars with interest thereon at twelve per cent per annum from May 15, 1925, and costs and disbursements herein. [5]

And further complaining of the defendants for a

### SECOND CAUSE OF ACTION

plaintiff adopts as and for Paragraphs I, II and III hereof, Paragraphs I, II and III, respectively, of

its first cause of action and makes same a part of this second cause of action as fully and to the same extent as if rewritten at length herein.

#### IV.

That on, to wit, March 15, 1922, the defendant Carl A. Hader, pursuant to an Act of Congress entitled "An Act to reduce and equalize taxation, to provide revenue, and for other purposes," approved November 23, 1921, filed in the office of the Collector of Internal Revenue for the First District of California, at San Francisco, California, his individual income tax return for the calendar year 1921, disclosing a tax liability due from said defendant to the plaintiff in the amount of One Hundred Thirty-two and 31/100 (\$132.31) Dollars, which amount was duly assessed and paid.

#### V.

That thereafter the Commissioner of Internal Revenue of the United States, in accordance with the internal revenue laws and the rules and regulations duly prescribed and promulgated relative thereto, duly examined the income tax return of said defendant for the calendar year 1921 and such other information as was before him in the matter and found and determined therefrom that the income tax liability due from said defendant was greater than the amount shown to be due by his return to the extent of Eight Hundred Eighty-two and 07/100 (\$882.07) Dollars, and further found and determined that said defendant's return for the year 1921 was fraudulently made and that by



reason thereof there was due in [6] addition to the tax a fraud penalty in the amount of Four Hundred Forty-one and 04/100 (\$441.04) Dollars, making a total amount due of One Thousand Three Hundred Twenty-three and 11/100 (\$1,323.11) Dollars, which was duly assessed by said Commissioner of Internal Revenue on the May, 1925, Special No. 9 income tax assessment list, page 0, line 1. That the Collector of Internal Revenue at San Francisco, California, notified said defendant of said assessment and made demand for payment thereof on, to wit, May 15, 1925. That on, to wit, May 18, 1925, J. G. Bright, then Deputy Commissioner of Internal Revenue, notified said defendant, in writing, that said assessment had been made in accordance with the provisions of Section 274 (d) of the Revenue Act of 1924, and informed him further that under Section 279 (a) of the Revenue Act of 1924 he was privileged to file a claim for abatement of the assessment within ten days after notice and demand for payment, and that any such claim should be accompanied by a bond.

## VI.

That upon receipt of said communication from the Deputy Commissioner J. G. Bright the said defendant filed an appeal with the United States Board of Tax Appeals in an attempt to get his tax liability redetermined.

That on, to wit, June 8, 1925, the said defendant executed a claim for abatement for the year 1921 in the amount of One Thousand Five Hundred Forty-one and 42/100 (\$1,541.42) Dollars, which

included the above-mentioned additional assessment, and filed the same with the above-mentioned Collector of Internal Revenue on, to wit, June 25, 1925.

## VII.

That subsequently on, to wit, August 18, 1925, in consideration of the aforesaid Collector refraining from enforcing immediate payment of the tax, assessed as aforesaid, the defendants, Carl A. Hader and William L. Hughson, executed a bond and delivered same to said Collector, signed by them with their respective names and under the style: "C. A. Hader, principal, W. L. Hughson, surety," wherein and whereby they firmly bound themselves, their [7] heirs, executors, administrators, successors and assigns, jointly and severally, unto the United States of America for the payment of the sum of Three Thousand Eighty-two and 84/100 (\$3,082.-84) Dollars, lawful money of the United States, which said bond contains the following condition, to wit:

"NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1921 as may be found due by the Commissioner, plus all penalties and interest, in accordance with the terms of the extension granted, and shall otherwise well and truly perform and observe all of the conditions of law and the regulations, then this obligation to be void, otherwise to remain in full force and effect."

A copy of said bond is attached hereto, made a part hereof the same as if fully rewritten at length herein, and is marked Exhibit "B" for identification.

### VIII.

That thereafter on to wit, November 17, 1925, the United States Board of Tax Appeals made an order dismissing the appeal of Carl A. Hader, Docket No. 5226, above mentioned, for lack of jurisdiction. That by virtue of said action of the Board of Tax Appeals the assessment above referred to remained unmodified, unchanged, and of full force and effect. That on, to wit, December 9, 1927, D. H. Blair, then Commissioner of Internal Revenue, informed the defendant Carl A. Hader, by letter of that date, that his claim for abatement hereinbefore referred to had been considered and was rejected for the full amount thereof, namely, One Thousand Five Hundred Forty-one and 42/100 (\$1,541.42) Dollars, and further advised the defendant that he was authorized by law to appeal from said determination to the United States Board of Tax Appeals if he was not satisfied. The defendant, however, did not take an appeal to the United States Board of Tax Appeals from the Commissioner's determination of the claim for abatement, in which he determined that the assessment was due and owing from said defendant. Thereafter on July 14, 1928, the defendant William [8] L. Hughson was advised by the Collector aforesaid that the defendant Carl A. Hader had failed to pay the tax liability secured by the aforesaid bond, and

demand was simultaneously made upon said defendant William L. Hughson for payment of the amount due. At various and divers other times demands have been made upon both of said defendants, yet they and each of them have wholly failed, neglected and refused to pay any part or portion of the amount due under and by virtue of the aforesaid bond.

### IX.

That the plaintiff has done all things required of it to be done under and by virtue of the terms and conditions of said bond, yet the defendants have wholly failed, neglected and refused to pay the amount due, in accordance with the terms of said bond, whereby they have breached the condition of their said bond and the promise thereof and therein contained has become and now is absolute, and there has accrued to the plaintiff an action to demand and have of said defendants and each of them on said bond the sum of One Thousand Three Hundred Twenty-three and 11/100 (\$1,323.11) Dollars, with interest thereon at twelve per cent per annum from May 15, 1925, the date of first notice and demand for payment of the tax liability, as by law provided.

WHEREFORE, the plaintiff, United States of America, prays judgment in this cause of action against the defendants, Carl A. Hader and William L. Hughson, and each of them, for the sum of One Thousand Three Hundred Twenty-three and 11/100 (\$1,323.11) Dollars, with interest thereon at twelve per cent per annum from May 15, 1925, and costs and disbursements herein. [9]

And further complaining of the defendants for a

### THIRD CAUSE OF ACTION

plaintiff adopts as and for paragraph I, II and III hereof, paragraph I, II and III, respectively, of its first cause of action and makes same a part of this third cause of action as fully and to the same extent as if rewritten at length herein.

#### IV.

That the defendant Carl A. Hader failed and neglected to file an income tax return for the calendar year 1922, showing the amount of his income and the income tax liability due thereon, as required by the provisions of an Act of Congress entitled "An Act To reduce and equalize taxation, to provide revenue, and for other purposes," approved November 23, 1921, although a return was due and should have been filed on or before March 15, 1923.

That the Commissioner of Internal Revenue of the United States, through his proper officers, in accordance with and by authority of the internal revenue laws and the rules and regulations duly prescribed and promulgated relative thereto, made an investigation of said defendant's financial affairs and transactions and found and determined that there was due from said defendant for the calendar year 1922 an income tax in the amount of Six Hundred Thirty-one and  $81/100$  (\$631.81) Dollars, and further found and determined that said defendant had wilfully and fraudulently failed and neglected to make a true and correct return of his income for said year and that by reason thereof there was due in addition to the said tax a fraud penalty in the

amount of Three Hundred Fifteen and 90/100 (\$315.90) Dollars, making a total sum due for said year of Nine Hundred Forty-seven and 71/100 (\$947.71) Dollars, which amount was duly assessed by said Commissioner of Internal Revenue on the May, 1925, Special No. 9 income tax assessment list, page 0, line 2, against said defendant. [10]

That the Collector of Internal Revenue at San Francisco, California, notified said defendant of said assessment and made demand on him for payment thereof on, to wit, May 15, 1925. That on, to wit, May 18, 1925, J. G. Bright, then Deputy Commissioner of Internal Revenue, notified said defendant, in writing, that said assessment had been made in accordance with the provisions of Section 274 (d) of the Revenue Act of 1924, and informed him that under Section 279 (a) of the Revenue Act of 1924 he was privileged to file a claim for abatement of the assessment within ten days after notice and demand for payment, and that any such claim should be accompanied by a bond.

#### V.

That upon receipt of said communication from then Deputy Commissioner J. G. Bright, the said defendant filed an appeal with the United States Board of Tax Appeals in an attempt to get his tax liability redetermined.

That on, to wit, June 8, 1925, the said defendant executed a claim for abatement for the year 1922 in the amount of One Thousand Forty-seven and 22/100 (\$1,047.22) Dollars, which included the above-mentioned assessment and filed the same with

the above-mentioned Collector of Internal Revenue on, to wit, June 25, 1925.

## VI.

That subsequently on, to wit, August 18, 1925, in consideration of the aforesaid Collector refraining from enforcing immediate payment of the tax assessed as aforesaid, the defendant Carl A. Hader and William L. Hughson executed a bond and delivered same to said Collector, signed by them with their respective names and under the style "C. A. Hader, principal, W. L. Hughson, surety," wherein and whereby they firmly bound themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, unto the United States of America for the payment of the sum of Two Thousand Ninety-four and 44/100 (\$2,094.44) Dollars, lawful money of the United States, which said bond contains the following condition to wit: [11]

"NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1922 as may be found due by the Commissioner, plus all penalties and interest, in accordance with the terms of the extension granted, and shall otherwise well and truly perform and observe all of the conditions of law and the regulations, then this obligation to be void, otherwise to remain in full force and effect."

A copy of said bond is attached hereto, made a part hereof the same as if fully rewritten herein, and is marked Exhibit "C" for identification.

## VII.

That thereafter on, to wit, November 17, 1925, the United States Board of Tax Appeals made an order dismissing the appeal of Carl A. Hader, Docket No. 5226, above mentioned, for lack of jurisdiction. That by virtue of said action of the Board of Tax Appeals the assessment above referred to remained unmodified, unchanged and of full force and effect. That on, to wit, December 9, 1927, D. H. Blair, then Commissioner of Internal Revenue, informed the defendant Carl A. Hader, by letter of that date, that his claim for abatement hereinbefore referred to had been considered and was rejected for the full amount thereof, namely, One Thousand Forty-seven and 22/100 (\$1,047.22) Dollars, and further advised the defendant that he was authorized by law to appeal from said determination to the United States Board of Tax Appeals if he was not satisfied. The defendant, however, did not take an appeal to the United States Board of Tax Appeals from the Commissioner's determination of the claim for abatement, in which he determined that the assessment was due and owing from said defendant. Thereafter on July 14, 1928, the defendant William L. Hughson was advised by the Collector aforesaid that the defendant Carl A. Hader had failed to pay the tax liability secured by the aforesaid bond, and demand was simultaneously made upon said defendant William L. Hughson for payment of the amount due. At various and divers other times demands have been made upon both of said defendants, yet they and each of them have wholly failed, neglected



and refused to pay any part or portion [12] of the amount due under and by virtue of the aforesaid bond.

### VIII.

That the plaintiff has done all the things required of it to be done under and by virtue of the terms and conditions of said bond, yet the defendants have wholly failed, neglected and refused to pay the amount due, in accordance with the terms of said bond, whereby they have breached the condition of their said bond and the promise thereof and therein contained has become and now is absolute, and there has accrued to the plaintiff an action to demand and have of said defendants and each of them on said bond the sum of Nine Hundred Forty-seven and  $71/100$  (\$947.71) Dollars, with interest thereon at twelve per cent. per annum from May 15, 1925, the date of first notice and demand for payment of the tax liability, as by law provided.

WHEREFORE, the plaintiff, United States of America, prays judgment in this cause of action against the defendants, Carl A. Hader and William L. Hughson, and each of them, for the sum of Nine Hundred Forty-seven and  $71/100$  (\$947.71) Dollars, with interest thereon at twelve per cent per annum from May 15, 1925, and costs and disbursements herein.

And further complaining of the defendants above mentioned for a

### FOURTH CAUSE OF ACTION

plaintiff adopts as and for paragraphs I, II and

III hereof paragraphs I, II and III respectively of its first cause of action and makes same a part of this third cause of action as fully and to the same extent as if rewritten at length herein.

#### IV.

The on, to wit, March 15, 1924, the defendant Carl A. Hader, pursuant to an Act of Congress entitled "An Act to reduce and equalize [13] taxation, to provide revenue, and for other purposes," approved November 23, 1921, filed in the office of the Collector of Internal Revenue for the First District of California, at San Francisco, California, his individual income tax return for the calendar year 1923, disclosing a tax liability due from said defendant to the plaintiff in the amount of Thirteen and 04/100 (\$13.04) Dollars, which amount was duly assessed and paid.

#### V.

That thereafter the Commissioner of Internal Revenue of the United States, in accordance with and by authority of the internal revenue laws and the rules and regulations duly prescribed and promulgated relative thereto, duly examined the income tax return of said defendant for the calendar year 1923 and such other information as was before him in the matter and found and determined therefrom that the income tax liability due from said defendant for said year was greater than the amount shown to be due by his return to the extent of Four Hundred Forty-seven and 20/100 (\$447.20) Dollars, and further found and determined that

said defendant's return for the year 1923 was fraudulently made and that by reason thereof there was due in addition to the tax above mentioned a fraud penalty in the amount of Two Hundred Twenty-three and 60/100 (\$223.60) Dollars, making a total sum due for said year of Six Hundred Seventy and 80/100 (\$670.80) Dollars in addition to the amount shown by the return, which amount, Six Hundred Seventy and 80/100 (\$670.80) Dollars, was duly assessed by said Commissioner of Internal Revenue on the May, 1925, Special No. 9 income tax assessment list, page 0, line 3, against said defendant. That the Collector of Internal Revenue at San Francisco, California, notified said defendant of said assessment and made demand for payment thereof on, to wit, May 15, 1925. That on, to wit, May 18, 1925, J. G. Bright, then Deputy Commissioner of Internal Revenue, [14] notified said defendant, in writing, that said assessment had been made in accordance with the provisions of Section 274 (d) of the Revenue Act of 1924, and informed him further that under Section 279 (a) of the Revenue Act of 1924 he was privileged to file a claim for abatement of the assessment within ten days after notice and demand for payment, and that any such claim should be accompanied by a bond.

## VI.

That upon receipt of said communication from the then Deputy Commissioner, J. G. Bright, the said defendant filed an appeal with the United

States Board of Tax Appeals in an attempt to get his tax liability redetermined.

That on, to wit, June 8, 1925, the said defendant executed a claim for abatement for the year 1923 in the amount of Seven Hundred and 99/100 (\$700.99) Dollars, which included tthe above-mentioned additional assessment, and filed the same with the above-mentioned Collector of Internal Revenue on, to wit, June 25, 1925.

## VII.

That subsequently on, to wit, August 18, 1925, in consideration of the aforesaid Collector refraining from enforcing immediate payment of the tax assessed as aforesaid, the defendants, Carl A. Hader and William L. Hughson, executed a bond, and delivered same to said Collector, signed by them with their respective names and under the style: "C. A. Hader, principal, W. L. Hughson, surety," wherein and whereby they firmly bound themselves, their heirs, executors, administrators, successors and assigns, jointly and severally, unto the United States of America for the payment of the sum of One Thousand Four Hundred One and 98/100 (\$1,401.98) Dollars, lawful money of the United States, which said bond contains the following condition to wit:

"NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1923 as may be found due by the Commissioner, plus all penalties and interest, in

accordance with the terms of the extension granted, [15] and shall otherwise well and truly perform and observe all of the conditions of law and the regulations, then this obligation to be void, otherwise to remain in full force and effect.”

A copy of said bond is attached hereto, made a part hereof the same as if fully rewritten at length herein, and is marked Exhibit “D” for identification.

### VIII.

That thereafter on, to wit, November 17, 1925, the United States Board of Tax Appeals made an order dismissing the said appeal of Carl A. Hader, Docket No. 5226, above mentioned, for lack of jurisdiction. That by virtue of said action of the Board of Tax Appeals the assessment above referred to remained unmodified, unchanged and of full force and effect. That on, to wit, December 9, 1927, D. H. Blair, then Commissioner of Internal Revenue, informed the defendant Carl A. Hader, by letter of that date, that his claim for abatement hereinbefore referred to had been considered and was rejected for the full amount, namely, Seven Hundred and 99/100 (\$700.99) Dollars, and further advised the defendant that he was authorized by law to appeal from said determination to the United States Board of Tax Appeals if he was not satisfied. The defendant, however, did not take an appeal to the United States Board of Tax Appeals from the Commissioner’s determination of the claim for abatement, in which he determined that the assessment was due and

owing from said defendant. Thereafter on July 14, 1928, the defendant William L. Hughson was advised by the Collector aforesaid, that the defendant Carl A. Hader had failed to pay the tax liability secured by the aforesaid bond, and demand was simultaneously made upon said defendant William L. Hughson for payment of the amount due. At various and divers other times demands have been made upon both of said defendants, yet they and each of them have wholly failed, neglected and refused to pay any part or portion of the amount due under and by virtue of the aforesaid bond. [16]

### IX.

That the plaintiff has done all things required of it to be done under and by virtue of the terms and conditions of said bond, yet the defendants have wholly failed, neglected and refused to pay the amount due in accordance with the terms of said bond, whereby they have breached the condition of their said bond and the promise thereof and therein contained has become and now is absolute, and there has accrued to the plaintiff an action to demand and have of said defendants and each of them on said bond the sum of Six Hundred Seventy and 80/100 (\$670.80) Dollars with interest thereon at twelve per cent per annum from May 15, 1925, the date of first notice and demand for payment of the tax liability, as by law provided.

WHEREFORE, the plaintiff, United States of America, prays judgment in this cause of action against the defendants, Carl A. Hader and Will-

iam L. Hughson, and each of them, for the sum of Six Hundred Seventy and  $80/100$  (\$670.80) Dollars, with interest thereon at twelve per cent per annum from May 15, 1925, and costs and disbursements herein.

That the total amount for which plaintiff prays judgment in the four causes of action above set forth is Four Thousand Seven Hundred Fifty-three and  $65/100$  (\$4,753.65) Dollars, with interest thereon at twelve per cent per annum from May 15, 1925, and for costs and disbursements herein.

GEO. J. HATFIELD,

United States Attorney.

ESTHER B. PHILLIPS,

Ass't U. S. Attorney. [17]

EXHIBIT "A."

BOND OF CARL A. HADER ON ABATEMENT  
OF DEFICIENCY TAXES ASSESSED  
FOR THE YEAR 1920.

KNOW ALL MEN BY THESE PRESENTS:

That we, Carl A. Hader, of San Francisco, California, as principal, and W. L. Hughson, as surety, are held and firmly bound unto the United States of America in the sum of Three Thousand Six Hundred Twenty-four and Six one-hundredths (\$3624.06) Dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents:

WHEREAS, there is due from the above bounden principal, Carl A. Hader, for additional income tax for the year 1920 an aggregate of One Thousand Eight Hundred Twelve and Three One-hundredths (\$1812.03) Dollars resulting from deficiency taxes which the Commissioner of Internal Revenue claims to be due because of fraud with intent to evade tax, but which taxpayer confidently asserts to be erroneous; and

WHEREAS, the exact payment of the deficiency in tax at this time by said Principal will result in undue hardship to him, and

WHEREAS, Section 274-G of the Revenue Act of 1924 provides that the Commissioner, with the approval of the Secretary may extend the time for the payment of such deficiency in tax or any part thereof for such period as may be considered necessary, not, however, in excess of eighteen months, and may require the taxpayer to furnish a bond with sufficient sureties conditioned for the payment of the deficiency and interest thereon in accordance with the terms of the extension granted, and

WHEREAS, it appears that the amount of this bond is sufficient to cover the aggregate of the deficiency of taxes assessed against such principal for the year 1920, together with penalties and interest, and

WHEREAS, The principal herein has perfected an appeal from the determination of the Commissioner assessing the deficiency tax for the year 1920, and desires that the payment of the deficiency



in tax be extended until the determination of said appeal, as a matter of fairness and justice.

NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1920 as may be found due by the Commissioner, plus all penalties and interest, in accordance with the terms of the extension granted, and shall otherwise well and truly perform and observe all of the conditions of law and the regulations, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this 18th day of August, 1925.

C. A. HADER,  
Principal.

W. L. HUGHSON,  
Surety. [18]

EXHIBIT "B."

BOND OF CARL A. HADER ON ABATEMENT  
OF DEFICIENCY TAX ASSESSED FOR  
THE YEAR 1921.

KNOW ALL MEN BY THESE PRESENTS:

That we, Carl A. Hader, of San Francisco, California, as principal, and W. L. Hughson, as surety, are held and firmly bound unto the United States of America in the sum of Three Thousand Eighty-two and Eighty-four One Hundredths (\$3082.84) Dollars, lawful money of the United States, for the payment thereof we bind ourselves, our heirs,

executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, there is due from the above bounden principal, Carl A. Hader, for additional income tax for the year 1921 an aggregate of One Thousand Five Hundred Forty-one and Forty-two One-hundredths (\$1541.42) Dollars, resulting from deficiency taxes which the Commissioner of Internal Revenue claims to be due because of fraud with intent to evade tax, but which taxpayer confidently asserts to be erroneous; and

WHEREAS, the exact payment of the deficiency in tax at this time by said principal will result in undue hardship to him, and

WHEREAS, Section 274-G of the Revenue Act of 1924 provides that the Commissioner, with the approval of the Secretary may extend the time for the payment of such deficiency in tax or any part thereof for such period as may be considered necessary, not, however, in excess of eighteen months, and may require the taxpayer to furnish a bond with sufficient sureties conditioned for the payment of the deficiency and interest thereon in accordance with the terms of the extension granted, and

WHEREAS, it appears that the amount of this bond is sufficient to cover the aggregate of the deficiency of taxes assessed against said Principal for the year 1921, together with penalties and interest; and

WHEREAS, the principal herein has perfected an appeal from the determination of the Com-

missioner assessing the deficiency tax for the year 1921, and desires that the payment of the deficiency in tax be extended until the determination of said appeal, as a matter of fairness and justice.

NOW, THEREFORE the condition of the foregoing obligation is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1921 as may be found due by the Commissioner, plus all penalties and interest, in accordance with the terms of the extension granted, and shall otherwise well and truly perform and observe all of the conditions of law and the regulations, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this 18th day of August, 1925.

C. A. HADER,

Principal.

W. L. HUGHSON,

Surety. [19]

State of California,

City and County of San Francisco,—ss.

On this 18th day of August, in the year one thousand nine hundred and twenty-five, before me Wm. E. Schord, a notary public, in and for the City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared C. A. Hader and W. L. Hughson, known to me to be the persons described *in whose* names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the said City and County of San Francisco, the day and year in this Certificate first above written.

[Seal] WM. E. SCHORD,  
Notary Public in and for the City and County of  
San Francisco, State of California.

209-10 Hearst Building.

My commission expires March 18th, 1926.

State of California,  
City and County of San Francisco,—ss.

W. L. Hughson, being first duly sworn, says: That he is a resident and freeholder of the City and County of San Francisco, State of California, and is worth the sum of Three Thousand Six Hundred Twenty-four and Six One-Hundredths (\$3624.06) Dollars, over and above all of his debts and liabilities, and exclusive of property exempt from execution.

W. L. HUGHSON.

Subscribed and sworn to before me this 18th day of August, 1925.

[Seal] WM. E. SCHORD,  
Notary Public in and for the City and County of  
San Francisco, State of California. [20]

State of California,  
City and County of San Francisco,—ss.

On this 18th day of August, in the year one thousand nine hundred and twenty-five, before me, Wm. E. Schord, a notary public, in and for the City and County of San Francisco, residing therein,

duly commissioned and sworn, personally appeared C. A. Hader and W. L. Hughson, known to me to be the persons described *in whose* names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal in the said City and County of San Francisco, the day and year in this Certificate first above written.

[Seal] WM. E. SCHORD,  
Notary Public in and for the City and County of  
San Francisco, State of California.

209-10 Hearst Building.

My commission expires March 18th, 1926.

State of California,  
City and County of San Francisco,—ss.

W. L. Hughson, being first duly sworn, says: That he is a resident and freeholder of the City and County of San Francisco, State of California, and is worth the sum of Three Thousand Eighty-two and Eighty-four One-hundredths (\$3082.84) Dollars, over and above all of his debts and liabilities, and exclusive of property exempt from execution.

W. L. HUGHSON.

Subscribed and sworn to before me this 18th day of August, 1925.

[Seal] WM. E. SCHORD,  
Notary Public in and for the City and County of  
San Francisco, State of California. [21]

## EXHIBIT "C."

BOND OF CARL A. HADER ON ABATEMENT  
OF DEFICIENCY TAX ASSESSED FOR  
THE YEAR 1922.

KNOW ALL MEN BY THESE PRESENTS:

That we, Carl A. Hader, of San Francisco, California, as principal and W. L. Hughson, as surety, are held and firmly bound unto the United States of America in the sum of Two Thousand Ninety-four and Forty-four One-hundredths (\$2094.44) Dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, there is due from the above bounden principal, Carl A. Hader, for additional income tax for the year 1922 an aggregate of One Thousand Forty-seven and Twenty-two One-hundredths (\$1047.22) Dollars, resulting from deficiency taxes which the Commissioner of Internal Revenue claims to be due because of fraud with intent to evade tax, but which taxpayer confidently asserts to be erroneous, and

WHEREAS, the exact payment of the deficiency in tax at this time by said principal will result in undue hardship to him; and

WHEREAS, Section 274-G of the Revenue Act of 1924 provides that the Commissioner, with the approval of the Secretary may extend the time for the payment of such deficiency in tax or any part thereof for such period as may be considered

necessary, not, however, in excess of eighteen months, and may require the taxpayer to furnish a bond with sufficient sureties conditioned for the payment of the deficiency and interest thereon in accordance with the terms of the extension granted; and

WHEREAS, it appears that the amount of this bond is sufficient to cover the aggregate of the deficiency of taxes assessed against said principal for the year 1922, together with penalties and interest; and

WHEREAS, the principal herein has perfected an appeal from the determination of the Commissioner assessing the deficiency tax for the year 1922, and desires that the payment of the deficiency in tax be extended, until the determination of said appeal, as a matter of fairness and justice.

NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1922 as may be found due by the Commissioner, plus all penalties and interest, in accordance with the terms of the extension granted, and shall otherwise well and truly perform and observe all of the conditions of law and the regulations, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this 18th day of August, 1925.

C. A. HADER,

Principal,

W. L. HUGHSON,

Surety. [22]

State of California,  
City and County of San Francisco,—ss.

On this 18th day of August in the year one thousand nine hundred and twenty-five, before me, Wm. E. Schord, a notary public, in and for the City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared C. A. Hader and W. L. Hughson, known to me to be the persons described *in whose* names are described to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal in the said City and County of San Francisco, the day and year in this Certificate first above written.

[Seal] WM. E. SCHORD,  
Notary Public in and for the City and County of  
San Francisco, State of California,  
209-10 Hearst Building.

My commission expires March 18th, 1926.

State of California,  
City and County of San Francisco,—ss.

W. L. Hughson, being first duly sworn, says: That he is a resident and freeholder of the City and County of San Francisco, State of California, and is worth the sum of Two Thousand Ninety-four and Forty-four One Hundredths (\$2094.44) Dollars, over and above all of his debts and liabilities, and exclusive of property exempt from execution.

W. L. HUGHSON.



Subscribed and sworn to before me, this 18th day of August 1925.

[Seal]

WM. E. SCHORD,

Notary Public in and for the City and County of San Francisco, State of California. [23]

EXHIBIT "D."

BOND OF CARL A. HADER ON ABATEMENT OF DEFICIENCY TAX ASSESSED FOR THE YEAR 1923.

KNOW ALL MEN BY THESE PRESENTS:

That we, Carl A. Hader, of San Francisco, California, as principal, and W. L. Hughson, as surety, are held and firmly bound unto the United States of America in the sum of One Thousand Four Hundred One and Ninety-eight One-hundredths (\$1401.98) Dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents.

WHEREAS, there is due from the above bounden principal, Carl A. Hader, for additional income tax for the year 1923 an aggregate of Seven Hundred and Ninety-nine One-hundredths (\$700.99) Dollars, resulting from deficiency taxes which the Commissioner of Internal Revenue claims to be due because of fraud with intent to evade tax, but which taxpayer confidently asserts to be erroneous, and

WHEREAS, The exact payment of the deficiency in tax at this time by said principal will result in undue hardship to him; and

WHEREAS, Section 274-G of the Revenue Act of 1924 provides that the Commissioner, with the approval of the Secretary may extend the time for payment of such deficiency in tax or any part thereof for such period as may be considered necessary, not, however, in excess of eighteen months, and may require the taxpayer to furnish a bond with sufficient sureties conditioned for the payment of the deficiency and interest thereon in accordance with the terms of the extension granted; and

WHEREAS, it appears that the amount of this bond is sufficient to cover the aggregate of the deficiency of taxes assessed against said principal for the year 1923, together with penalties and interest; and

WHEREAS, the principal herein has perfected an appeal from the determination of the Commissioner assessing the deficiency tax for the year 1923, and desires that the payment of the deficiency in tax be extended until the determination of said appeal, as a matter of fairness and justice.

NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1923 as may be found due by the Commissioner, plus all penalties and interest, in accordance with the terms of the extension granted, and shall otherwise well and truly perform and observe all of the conditions of law and the regulations, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this 18th day of August 1925.

C. A. HADER,  
Principal,  
W. L. HUGHSON,  
Surety. [24]

State of California,  
City and County of San Francisco,—ss.

On this 18th day of August in the year one thousand nine hundred and twenty-five, before me, Wm. E. Schord, a notary public, in and for the City and County of San Francisco, residing therein, duly commissioned and sworn, personally appeared C. A. Hader and W. L. Hughson, known to me to be the persons described *in whose* names are subscribed to the within instrument and acknowledged to me that they executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my Official Seal in the said City and County of San Francisco, the day and year in this Certificate first above written.

[Seal] WM. E. SCHORD,  
Notary Public in and for the City and County of  
San Francisco, State of California,  
209-10 Hearst Building.

My commission expires March 18th, 1926.

State of California,  
City and County of San Francisco,—ss.

W. L. Hughson, being first duly sworn, says: That he is a resident and freeholder of the City and County of San Francisco, State of California,

and is worth the sum of One Thousand Four Hundred One and Ninety-eight One-hundredths (\$1401.-98) Dollars, over and above all of his debts and liabilities, and exclusive of property exempt from execution.

W. L. HUGHSON.

Subscribed and sworn to before me this 18th day of August 1925.

[Seal] WM. E. SCHORD,  
Notary Public in and for the City and County of  
San Francisco, State of California. [25]

State and Northern District of California,  
City and County of San Francisco,—ss.

Esther B. Phillips, being first duly sworn, deposes and says:

I am an Assistant United States Attorney for the Northern District of California. I make this verification in behalf of the plaintiff, a sovereign state. I have read the complaint and know the contents thereof. The same is true of my own knowledge, save as to matters therein referred to on information and belief, and as to those matters I believe it to be true.

ESTHER B. PHILLIPS.

Subscribed and sworn to this 7th day of January, 1931, before me.

[Seal] HARRY L. FOUTS,  
Clerk of the United States District Court.

[Endorsed]: Filed Jan. 7, 1931. [26]

[Title of Court and Cause.]

ANSWER OF DEFENDANT WILLIAM L.  
HUGHSON.

Now come William L. Hughson, one of the defendants in the above-entitled action, and for answer to the complaint of plaintiff on file herein, denies and alleges as follows:

1. Answering the allegations in Paragraph VI of the first cause of action set forth in said complaint, this defendant admits the execution by him of the instrument referred to as a bond in said Paragraph VI, a copy of which is annexed to said complaint and marked Exhibit "A," but denies that there was any consideration for the execution of said instrument by this defendant; and denies that the appeal referred to in said instrument was ever taken and perfected by said C. A. Hader; and further alleges that said appeal so alleged therein to have been taken by said defendant Hader, was never perfected, and was dismissed as having been prematurely taken, and the said purported bond, Exhibit "A," never became operative, and did not stay, nor prevent, the enforcement or immediate collection by the Collector of Internal Revenue of Taxes, or Deficiency Taxes, claimed to be due from, or assessed against, said defendant, C. A. Hader.

[27]

2. This defendant denies that the sum of eighteen hundred twelve and 3/100 (1812.03) dollars, or any part or portion thereof, or any other sum, is now,

or ever became due or owing from this defendant to the plaintiff herein, or to said Commissioner of Internal Revenue, or to said Collector of Internal Revenue, either under or in accordance with the terms of said bond, Exhibit "A," or otherwise, or at all; and further denies that any interest is now, or ever became due, owing or unpaid by this defendant either in accordance with the terms of said bond, Exhibit "A," or otherwise, or at all; denies that said, or any, promise contained in said bond, Exhibit "A," or otherwise, or elsewhere, ever became, or is now, absolute; and denies that there has accrued to plaintiff an action, or any action, to demand of this defendant on said bond, or otherwise, or at all, the sum of eighteen hundred twelve  $\frac{3}{100}$  (1812.03) dollars, or any part or portion thereof, or any other sum, or any interest thereof, or upon any other sum, at the rate of twelve (12) per cent per annum, or any other rate per cent per annum, from May 15th, 1925, or from any other date, or otherwise, or at all.

And for a second, further, separate and distinct defense to said first alleged cause of action, this defendant alleges that the cause of action therein set forth against this defendant is barred by the provisions of Section 791, Title 28 of the United States Code.

And for a third, further, separate, and distinct defense to said first alleged cause of action, this defendant alleges that said alleged bond, Exhibit "A," was not filed at the [28] time required by Law, and that it was never accepted or approved by

said Collector of Internal Revenue as required by Law.

And for the fourth, further, separate, and distinct defense to said first alleged cause of action set forth in said complaint, this defendant alleges that the claim in abatement, referred to in Paragraph VI of said complaint, was not filed within the time required by Law, and was never passed upon, nor approved by, said Collector of Internal Revenue.

And for a fifth, further, separate and distinct defense to said first alleged cause of action set forth in said complaint, this defendant alleges that on or about the 15th day of January, 1930, this defendant made an offer of compromise to the Commissioner of Internal Revenue of his alleged liability upon the four instruments which are the basis of the four causes of action set forth in plaintiff's complaint, copies of which instruments are annexed thereto as Exhibits "A," "B," "C" and "D," and that said Commissioner of Internal Revenue, on the 7th day of February, 1930, accepted the sum of one hundred (100) dollars from this defendant in full settlement of all claims against this defendant, arising upon, or out of said four bonds. [29]

## II.

Answering the second cause of action set forth in said complaint, this defendant denies and alleges as follows:

1. Answering the allegations in paragraph marked VII of the second cause of action set forth in said complaint, this defendant admits the execution by him of the instrument referred to as a bond

in said paragraph marked VII, a copy of which is annexed to said complaint and marked Exhibit "B," but denies that there was any consideration for the execution of said instrument by this defendant; and denies that the appeal referred to in said instrument was ever taken and perfected by said C. A. Hader; and further alleges that said appeal so alleged therein to have been taken by said defendant Hader, was never perfected, and was dismissed as having been prematurely taken, and the said purported bond, Exhibit "B," never became operative, and did not stay, nor prevent, the enforcement or immediate collection by the Collector of Internal Revenue of Taxes, or Deficiency Taxes, claimed to be due from, or assessed against, said defendant, C. A. Hader.

2. This defendant denies that the sum of thirteen hundred twenty-three and 11/100 (1323.11) dollars, or any part or portion thereof, or any other sum, is now, or ever became due or owing from this defendant to the plaintiff herein, or to said Commissioner of Internal Revenue, or to said Collector of Internal Revenue, either under or in accordance with the terms of said bond, Exhibit "B," or otherwise, or at all; and further denies that any interest is now, or ever became due, owing or unpaid by this defendant either in accordance with the terms of said bond, Exhibit "B," or otherwise, or at all; denies that said, or any, promise contained in said bond, Exhibit "B," or otherwise, or elsewhere, ever became or is now, absolute; and denies that there has accrued to plaintiff an action, [30] or any action,



to demand of this defendant on said bond, or otherwise, or at all, the sum of thirteen hundred twenty-three 11/100 (1323.11) dollars, or any part or portion thereof, or any other sum, or any interest thereof, or upon any other sum, at the rate of twelve (12) per cent per annum, or any other rate per cent per annum, from May 15th, 1925, or from any other date, or otherwise, or at all.

And for a second, further, separate and distinct defense to said second alleged cause of action, this defendant alleges that the cause of action therein set forth against this defendant is barred by the provisions of Section 791, Title 28 of the United States Code.

And for a third, further, separate, and distinct defense to said second alleged cause of action, this defendant alleges that said alleged bond, Exhibit "B," was not filed at the time required by Law, and that it was never accepted or approved by said Collector of Internal Revenue as required by Law.

And for a fourth, further, separate, and distinct defense to said second alleged cause of action set forth in said complaint, this defendant alleges that the claim in abatement, referred to in paragraph marked VII of said complaint, was not filed within the time required by Law, and was never passed upon, nor approved by, said Collector of Internal Revenue.

And for a fifth, further, separate, and distinct defense to said second alleged cause of action set forth in said complaint, this defendant alleges that on or about the 15th day of January, 1930, this de-

fendant made an offer of compromise [31] to the Commissioner of Internal Revenue of his alleged liability upon the four instruments which are the basis of the four *cause* of action set forth in plaintiff's complaint, copies of which instruments are annexed thereto as Exhibits "A," "B," "C," and "D," and that said Commissioner of Internal Revenue, on the 7th day of February, 1930, accepted the sum of one hundred (100) dollars from this defendant, in full settlement of all claims against this defendant, arising upon, or out of said four bonds.

### III.

Answering the third cause of action set forth in said complaint, this defendant denies and alleges as follows:

1. Answering the allegations in paragraph marked VI of the third cause of action set forth in said complaint, this defendant admits the execution by him of the instrument referred to as a bond in said paragraph marked VI, a copy of which is annexed to said complaint and marked Exhibit "C," but denies that there was any consideration for the execution of said instrument by this defendant; and denies that the appeal referred to in said instrument was ever taken and perfected by said C. A. Hader; and further alleges that said appeal so alleged therein to have been taken by said defendant Hader, was never perfected, and was dismissed as having been prematurely taken, and the said purported bond, Exhibit "C," never became operative, and did not stay, nor prevent, the enforcement or immediate collection by the Collector

of Internal Revenue of Taxes, or Deficiency Taxes, claimed to be due from, or assessed against, said defendant, C. A. Hader.

2. This defendant denies that the sum of nine hundred forty-seven and  $71/100$  (947.71) dollars, or any part or portion thereof, or any other sum, is now, or ever became due or owing [32] from this defendant to the plaintiff herein, or to said Commissioner of Internal Revenue, or to said Collector of Internal Revenue, either under or in accordance with the terms of said bond, Exhibit "C," or otherwise, or at all; and further denies that any interest is now, or ever became due, owing or unpaid by this defendant either in accordance with the terms of said bond, Exhibit "C," or otherwise, or at all; denies that said, or any, promise contained in said bond, Exhibit "C," or otherwise, or elsewhere, ever became, or is now, absolute; and denies that there has accrued to plaintiff an action, or any action, to demand of this defendant on said bond, or otherwise, or at all, the sum of nine hundred forty-seven and  $71/100$  (947.71) dollars, or any part or portion thereof, or any other sum, or any interest thereof, or upon any other sum, at the rate of twelve (12) per cent per annum, or any other rate per cent per annum, from May 15th, 1925, or from any other date, or otherwise, or at all.

And for a second, further, separate, and distinct defense to said third alleged cause of action, this defendant alleges that the cause of action therein set forth against this defendant is barred by the

provisions of Section 791, Title 28, of the United States Code.

And for a third, further, separate, and distinct defense to said third alleged cause of action, this defendant alleges that said alleged bond, Exhibit "C," was not filed at the time required by law, and that it was never accepted or approved by said Collector of Internal Revenue as required by law.

And for a fourth, further, separate, and distinct defense to said third alleged cause of action set forth in said [33] complaint, this defendant alleges that the claim in abatement, referred to in paragraph marked VI of said complaint, was not filed within the time required by law, and was never passed upon, nor approved by, said Collector of Internal Revenue.

And for a fifth, further, separate, and distinct defense to said third alleged cause of action set forth in said complaint, this defendant alleges that on or about the 15th day of January, 1930, this defendant made an offer of compromise to the Commissioner of Internal Revenue of his alleged liability upon the four instruments which are the basis of the four causes of action set forth in plaintiff's complaint, copies of which instruments are annexed thereto as Exhibits "A," "B," "C" and "D," and that said Commissioner of Internal Revenue, on the 7th day of February, 1930, accepted the sum of one hundred (100) dollars from this defendant in full settlement of all claims against this defendant, arising upon, or out of said four bonds.

## IV.

Answering the fourth cause of action set forth in said complaint, this defendant denies and alleges as follows:

1. Answering the allegations in paragraph marked VII of the fourth cause of action set forth in said complaint, this defendant admits the execution by him of the instrument referred to as a bond in said paragraph marked VII, a copy of which is annexed to said complaint and marked Exhibit "D," but denies that there was any consideration for the execution of said instrument by this defendant; and denies that the appeal referred to in said instrument was ever taken and perfected by said C. A. Hader; and further alleges that said appeal so alleged therein to have been taken by said defendant Hader, was never perfected, and was dismissed as having been prematurely taken, and the [34] said purported bond, Exhibit "D," never became operative, and did not stay, nor prevent, the enforcement or immediate collection by the Collector of Internal Revenue of taxes, or deficiency taxes, claimed to be due from, or assessed against, said defendant, C. A. Hader.

2. This defendant denies that the sum of six hundred seventy and 80/100 (670.80) dollars, or any part or portion thereof, or any other sum, is now, or ever became due or owing from this defendant to the plaintiff herein, or to said Commissioner of Internal Revenue, or to said Collector of Internal Revenue, either under or in accordance with the terms of said bond, Exhibit "D," or otherwise, or at all; and further denies that any interest is

now, or ever became due, owing or unpaid by this defendant either in accordance with the terms of said bond, Exhibit "D," or otherwise, or at all; denies that said, or any, promise contained in said bond, Exhibit "D," or otherwise, or elsewhere, ever became, or is now, absolute; and denies that there has accrued to plaintiff an action, or any action, to demand of this defendant on said bond, or otherwise, or at all, the sum of six hundred seventy and 80/100 (670.80) dollars, or any part or portion thereof, or any other sum, or any interest thereof, or upon any other sum, at the rate of twelve (12) per cent per annum, or any other rate per cent per annum, from May 15th, 1925, or from any other date, or otherwise, or at all.

And for a second, further, separate, and distinct defense to said fourth alleged cause of action, this defendant alleges that the cause of action therein set forth against this defendant is barred by the provisions of Section 791, Title 28, of the United States Code. [35]

And for a third, further, separate, and distinct defense to said fourth alleged cause of action, this defendant alleges that said alleged bond, Exhibit "D," was not filed at the time required by law, and that it was never accepted, or approved, by said Collector of Internal Revenue, as required by law.

And for a fourth, further, separate, and distinct defense to said fourth alleged cause of action set forth in said complaint, this defendant alleges that the claim in abatement, referred to in paragraph marked VI of said complaint, was not filed

within the time required by law, and was never passed upon, nor approved by, said Collector of Internal Revenue.

And for a fifth, further, separate, and distinct defense to said fourth alleged cause of action set forth in said complaint, this defendant alleges that on or about the 15th day of January, 1930, this defendant made an offer of compromise to the Commissioner of Internal Revenue of his alleged liability upon the four instruments which are the basis of the four causes of action set forth in plaintiff's complaint, copies of which instruments are annexed thereto as Exhibits "A," "B," "C," and "D," and that said Commissioner of Internal Revenue, on the 7th day of February, 1930, accepted the sum of one hundred (100) dollars from this defendant in full settlement of all claims against this defendant, arising upon, or out of said four bonds.

Further answering said complaint and the allegations thereof, this defendant denies that the sum of forty-seven hundred fifty-three and  $\frac{65}{100}$  (4753.65) dollars, or any part or [36] portion thereof, or any other sum, either with or without interest at the rate of twelve (12) per cent per annum, or at any other rate, is due from this defendant to the plaintiff from May 15th, 1925, or from any other date, or at all.

WHEREFORE, this defendant prays that he be *henced* dismissed with judgment for his costs of suit.

Dated March 26th, 1931.

HARRY F. SULLIVAN,  
Attorney for Wm. L. Hughson,  
718 Humboldt Bank Building,  
San Francisco, California.

State of California,  
City and County of San Francisco,—ss.

William L. Hughson, being first duly sworn, says that he is one of the defendants in the above-entitled action, that he has read the foregoing answer and knows the contents thereof, and that the same is true of his own knowledge, except as to the matters which are therein stated upon information and belief, and as to those matters he believes it to be true.

WILLIAM L. HUGHSON.

Subscribed and sworn to before me this 26th day of March, 1931.

[Seal] JOHN WISNOM,  
Notary Public, in and for the City and County of  
San Francisco, State of California.

Receipt of a copy of the within answer is admitted this 26th day of March, 1931.

GEO. J. HATFIELD,  
Attorney for Plaintiff.

[Endorsed]: Filed Mar. 26, 1931. [37]



(Title of Court and Cause.)

WAIVER OF JURY.

It is hereby stipulated and agreed that this case may be tried by the court sitting without a jury.

July 17, 1931.

GEO. J. HATFIELD,

United States Attorney,

By ESTHER B. PHILLIPS,

Assistant United States Attorney,

(Attorneys for Plaintiff).

HARRY F. SULLIVAN,

(Attorney for Defendant, Wm. L. Hughson).

[Endorsed]: Filed Jul. 18, 1931. [38]



(Title of Court and Cause.)

FINDINGS OF FACT AND CONCLUSIONS  
OF LAW.

The above-entitled cause came regularly on for trial on July 27, 1931, before the above-entitled court, Honorable Harold Louderback, presiding, sitting without a jury, a written waiver of jury being filed in the records of the case. The plaintiff was represented by Geo. J. Hatfield, United States Attorney, and Esther B. Phillips, Assistant United States Attorney, defendant W. L. Hughson being represented by Harry F. Sullivan, defendant Carl A. Hader not appearing. Evidence oral and documentary was introduced. The Court,

having considered the same and the arguments of counsel, now makes the following

## FINDINGS OF FACT.

### I.

The allegations of Paragraphs I, II, III, IV, V, and VI of the plaintiff's first, second, third and fourth causes of action are true. That on or about August 18, 1925, the defendant Wm. L. Hughson and the defendant Carl A. Hader duly signed and executed bonds for the payment of taxes previously assessed against Carl A. Hader, true and correct copies of said bonds being attached to the complaint as Exhibits "A," "B," "C," and "D."

### II.

On or about August 18, 1925, said bonds were delivered to John P. McLaughlin, United States Collector of Internal Revenue at San Francisco, and were duly accepted by said Collector and his superiors. They were given in consideration of the matters referred to in the bonds, and in consideration of extension of time for payment, and in consideration [39] of said Collector refraining from enforcing immediate payment of the taxes referred to in said bonds. Relying on the bonds, the Collector made no further effort to collect the taxes referred to in the bonds and in the complaint. No property was seized upon in distraint proceedings and no effort to *destrain* was made after said bonds were given.

### III.

The allegations of Paragraph VIII of plaintiff's

first, second, third and fourth causes of action are true.

#### IV.

The plaintiff has done all things required of it to be done under and by the terms and conditions of the bonds in suit. No part of the taxes referred to in the bonds has been paid. The defendants have wholly failed and refused to pay any part of the amount due under each of said bonds.

#### V.

On January 15, 1930, the defendant Hughson by his attorney, sent to the General Counsel, Bureau of Internal Revenue, a written offer in compromise of his total liability under the four bonds in suit, in the sum of one hundred dollars, attaching to the offer a check for \$100, payable to the Commissioner. The check was endorsed by the Commissioner to the Collector, and with the offer was sent to the Collector for having the offer made in a new form. Defendant Hughson, at the Collector's request, on February 4, 1930, signed a new offer of compromise. The Collector cashed the check on or about February 7, 1930, and deposited the money in a special account and sent the offer to the Commissioner with his recommendation. In April, 1930, the Commissioner rejected the offer in compromise. The defendant Hughson was notified of the rejection and was tendered the sum which he had previously deposited for the compromise, such tender being made by [40] the Collector in accordance with the rules and regulations of the Bureau of Internal Revenue and of the customs and practice of the Collector's office.

The defendant Hughson refused to accept the return of his deposit but is entitled to recover it upon application to the Collector or the Commissioner.

From the foregoing facts the court states these

### CONCLUSIONS OF LAW.

#### First Cause of Action.

1. That the plaintiff is entitled to recover from the defendant Hughson the sum of \$1812.03, with interest thereon at 6% from May 15, 1925, to July 15, 1928, and thereafter at the rate of 12% per annum.

#### Second Cause of Action.

2. That the plaintiff is entitled to recover from the defendant Hughson the sum of \$1323.11, with interest at 6% from May 15, 1925, to July 15, 1928, and thereafter at the rate of 12% per annum.

#### Third Cause of Action.

3. That the plaintiff is entitled to recover from the defendant Hughson, the sum of \$947.71, with interest at 6% from May 15, 1925, to July 15, 1928, and thereafter at the rate of 12% per annum.

#### Fourth Cause of Action.

4. That the plaintiff is entitled to recover from the defendant Hughson, the sum of \$670.80, with interest thereon at 6% from May 15, 1925, to July 15, 1928, and thereafter at the rate of 12% per annum, together with costs of suit herein incurred.

HAROLD LOUDERBACK,

United States District Judge.

Service of the within proposed findings by copy admitted this 15th day of August, 1931.

HARRY F. SULLIVAN,  
Attorney for Deft. Hughson.

[Endorsed]: Filed Aug. 21, 1931. [41]

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[Title of Court and Cause.]

### EXCEPTIONS TO FINDINGS.

Now comes the defendant William L. Hughson, and respectfully presents and takes the following exceptions to the findings of fact duly given, made and signed by Hon. Harold J. Louderback, United States District Judge in the above-entitled court.

1. Said defendant excepts to that portion of Finding "I" wherein said Court finds that the allegations of Paragraph "VI" in each of the four causes of action in plaintiff's complaint, are true for the reason that there is no allegation in either of said four causes of action in said complaint, alleging that any order, assessment, or determination, had been made at the time defendant Hader filed his appeal, from which an appeal could be taken.

2. Said defendant excepts to that portion of Finding "II" of the findings of said Court, and in particular that portion thereof wherein the Court finds that the four bonds referred to in the four causes of action in said complaint, were accepted by the Collector and his superiors, on the ground that there was no allegation in either of the four causes

of action in plaintiff's complaint to the effect that said four bonds were accepted. [42]

3. Said defendant excepts to that portion of Finding "II," wherein the Court finds that said four bonds were given for a consideration, for the reason that each of said four bonds were predicated upon the belief that an appeal had been filed and perfected by defendant Hader, whereas there was no order or determination of the Commissioner of Internal Revenue from which said Hader had any right to take an appeal.

4. Said defendant excepts to that portion of Finding "IV," wherein said Court finds that no part of the taxes referred to in the bonds, has been paid, for the reason that there was no allegation in plaintiff's complaint that said taxes were not paid after July 14th, 1928, and prior to January 7th, 1931, the date on which the complaint was filed herein.

5. Said defendant excepts to the action of said Court in failing to find that the Commissioner of Internal Revenue accepted one hundred (100) dollars from defendant Hughson, on or about the 7th of February, 1930, in compromise of plaintiff's claims, based upon the four bonds in suit; and in failing to find that the cashing of said check for one hundred (100) dollars, on February 7th, 1930, constituted an acceptance of an offer of compromise, theretofore made by said defendant Hughson.

6. Said defendant Hughson excepts to the action of the Court in failing to find that each of the four causes of action set forth in plaintiff's complaint

was barred by the provisions of section 791, article 28, of the United States Code.

7. Said defendant Hughson excepts to the conclusion of said Court to the effect that plaintiff is entitled to recover interest at the rate of twelve per cent from and after July 15, 1928.

Dated August 31st, 1931.

WILLIAM L. HUGHSON,  
Defendant.  
HARRY F. SULLIVAN,  
Attorney for Defendant.

Foregoing exceptions allowed.

HAROLD LOUDERBACK,  
U. S. District Judge.

[Endorsed]: Filed Sep. 15, 1931. [43]

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In the Southern Division of the United States District Court for the Northern District of California.

No. 18,880-L.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

CARL A. HADER and WILLIAM L. HUGHSON,  
Defendants.

### JUDGMENT ON FINDINGS.

This cause having come on regularly for trial upon the 27th day of July, 1931, before the Court

sitting without a jury, a trial by jury having been waived by written stipulation filed; Esther B. Phillips, Assistant U. S. Attorney, appearing as attorney for plaintiff, and Harry F. Sullivan, Esquire, appearing as attorney for defendants, and oral and documentary evidence having been introduced and closed, and the cause having been submitted to the Court for consideration and decision, and the Court after due deliberation having rendered its decision and filed its findings and ordered that judgment be entered herein in favor of plaintiff in, accordance with said findings:

NOW, THEREFORE, by virtue of the law and by reason of the findings aforesaid, it is considered by the Court that United States of America, plaintiff, do have and recover of and from William L. Hughson, said defendant, the sum of \$1812.03 on the first cause of action, \$1323.11 on the second cause of action, \$947.71 on the third cause of action, and \$670.80 on the fourth cause of action, making a total of \$4,753.65, with interest at six per cent (6%) from May 15, 1925, to July 14, 1928, and thereafter interest at the rate of twelve per cent (12%) per annum until paid; together with its costs herein expended taxed at \$27.00.

Judgment entered this 21st day of August, 1931.

WALTER B. MALING,

Clerk. [44]



[Title of Court and Cause.]

NOTICE OF ENTRY OF JUDGMENT.

To Defendant Wm. L. Hughson and to Harry F. Sullivan, His Attorney :

Please take notice that findings of fact and conclusions of law were this day signed by the Court, and judgment thereon entered in plaintiff's favor.

Dated: August 21, 1931.

GEO. J. HATFIELD,  
United States Attorney.  
ESTHER B. PHILLIPS,  
Assistant United States Attorney.

Service of the within notice, etc., by copy admitted this 21st day of August, 1931.

HARRY F. SULLIVAN,  
Attorney for Deft. Hughson.

[Endorsed]: Filed Aug. 21, 1931. [45]

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[Title of Court and Cause.]

DEFENDANTS' PROPOSED BILL OF EXCEPTIONS.

BE IT REMEMBERED that on the 27th day of July, 1931, before the above-entitled court, at San Francisco, California, Hon. Harold J. Louderback, Judge of said court presiding, a jury trial having been duly waived the above-entitled cause came on to be heard, Hon. George J. Hatfield, United States

(Testimony of John P. McLaughlin.)

Attorney, and Miss Esther Phillips, Assistant United States Attorney, appearing for the plaintiff, and Harry F. Sullivan, Esq., appearing for defendant, William L. Hughson, and defendant Carl A. Hader, neither appearing in person, nor by attorney, the following proceedings were had, to wit:

TESTIMONY OF HON. JOHN P. McLAUGHLIN, FOR PLAINTIFF.

HON. JOHN P. McLAUGHLIN produced sworn and examined as a witness for the plaintiff, and testified as follows:

Direct Examination.

To Miss PHILLIPS.—I am now, and ever since November 21, 1921, have continuously been Collector of Internal Revenue for the First Collection District in San Francisco, California.

Miss PHILLIPS.—Q. “Mr. McLaughlin, I now show you a certified copy of an assessment certificate against Mr. Carl [46] A. Hader, for various amounts covering several years. I would like to have you look at that and tell me when that assessment certificate came to your office, if you know. You can refresh your recollection with it.”

“Mr. SULLIVAN.—I desire at this time to make an objection to this testimony sought to be elicited by this question, and all questions along the same line, that they are absolutely irrelevant, immaterial, and incompetent, so far as the defendant Hughson is concerned, in that Hughson was not a party to any

(Testimony of John P. McLaughlin.)

proceedings concerning which that certified copy was filed with the Collector of Internal Revenue at San Francisco. The action is an action upon certain bonds. I think that the Government is limited in proving its cause of action to the facts set forth in the bond. There is no allegation in the bond attached to the complaint in this case which deals with the question of assessment, at all."

"Miss PHILLIPS.—It is merely preliminary. The action is upon a bond, but refers to the tax liability of the defendant Hader."

"The COURT.—In other words, you want to show the fact there was a tax liability?"

"Miss PHILLIPS.—Exactly, and particularly the consideration which the Collector gave after this bond had been filed in withholding collection."

"The COURT.—I will overrule the objection."

"Mr. SULLIVAN.—Exception."

EXCEPTION No. 1.

WITNESS.—A. "This was received at the office in May, 1925."

WITNESS.—(Continuing.) This was a jeopardy assessment, and demand was made and warrant of distraint issued immediately. I had dealings with Mr. Hader personally in regard to the assessment at the time he filed his claims in abatement. Hader on June 8, 1925, filed claims in abatement, which were rejected on March [47] 5, 1928. At the time of filing his claims in abatement, Mr. Hader tendered a bond. It was in the wrong form. I re-

(Testimony of John P. McLaughlin.)

turned it to him, telling him why I was returning it. I myself have charge of the acceptance or rejection of bonds. I always handle such matters personally. I have no recollection of the exact date on which the bonds in suit were filed with me. The date upon them, August 25, 1925, I think would be right. They were handed to me personally in the office. Between August, 1925, and March, 1928, I made no attempt to collect any tax from Mr. Hader. [48]

Miss PHILLIPS.—“Q. Between the interval of August, 1925, and March, 1928, did you take any steps to collect any tax from Mr. Hader?”

A. No, ma'am.

Q. Why not?”

Mr. SULLIVAN.—“I object to that as calling for a conclusion.”

Miss PHILLIPS.—“The defendants in this case admit the bond was filed. They deny that any consideration was given because of the filing of this bond. I am now proving that because this bond was filed the Collector made no efforts at collection.”

The COURT.—“I allow the question.”

Mr. SULLIVAN.—“Exception.”

#### EXCEPTION No. 2.

A. “The fact that I had bonds which covered the claims, and that the claims were pending, and until the claims were rejected there should be no action. After that we could proceed at any time. We had to.”

(Testimony of John P. McLaughlin.)

Mr. SULLIVAN.—I ask that that portion of the answer in which he said he had “bonds which covered the claim” be stricken out as calling for the conclusion of the witness.

The COURT.—“You mean that the bond that you believe covered the claim?”

A. “Yes.”

“Q. And that was the reason why you were not proceedings at that time? A. Exactly.”

The COURT.—“I think the record now shows what he meant by that matter.”

The Court failed to make any order passing on defendants motion to strike out that portion of the answer above referred to.

Cross-examination.

To Mr. SULLIVAN, Witness.—The four warrants of distraint, one for each of the four separate years involved, were issued [49] on May 15th, 1925. I have copies of these warrants in my hand.

Thereupon defendant offered said four copies of said warrants in evidence, and they were all admitted in evidence and marked Defendant’s Exhibit No. 1.

WITNESS.—(Continuing.) These warrants were never withdrawn.

Thereupon counsel for plaintiff offered in evidence certified copy of assessment-roll showing deficiency tax assessed against Carl A. Hader, defendant herein.

(Testimony of John P. McLaughlin.)

Mr. SULLIVAN.—“I make the same objection to the offer of that in evidence at the present time, as I made when the witness was asked about it on direct examination.”

The COURT.—“The objection will be overruled.”

Mr. SULLIVAN.—“Exception.”

### EXCEPTION No. 3.

Thereupon said assessment-roll was admitted in evidence and marked Plaintiff's Exhibit No. 1.

Thereupon plaintiff rested.

### TESTIMONY OF DAVID BARRY, FOR DEFENDANT HUGHSON.

DAVID BARRY, a witness, produced, sworn, and examined on behalf of defendant Hughson, testified as follows:

To Mr. SULLIVAN.—My name is David Barry, and I am employed as a clerk by the Hibernia Savings & Loan Society. I have here a check dated January 15, 1930, which is in the words and figures following, to wit:

“No. 573969, San Francisco, Calif., January 15, 1930, No. 657. The Hibernia Savings & Loan Society Pay to the Commissioner of Internal Revenue or order \$100. Pay One Hundred and No Cents Dollars. W. L. Hughson. Certified, The Hibernia Savings & Loan Society, February 6, 1930. Good when properly endorsed, Hibernia Savings & Loan Society, L. O'Grady.” [50]

(Testimony of David Barry.)

WITNESS.—(Continuing.) This check bears the following endorsements—

“Pay to the order of the Collector of Internal Revenue without recourse, 14544. Certified by Robert H. Lucas.”

“Pay to the order of the Federal Reserve Bank of San Francisco, California, February 6, 1930, John P. McLaughlin, Collector of Internal Revenue, John P. McLaughlin.”

“Received payment CCC February 7, 1930, Federal Reserve Bank of San Francisco.”

WITNESS.—(Continuing.) Across the face of the check is the stamp—

“Paid, The Hibernia Savings & Loan Society, San Francisco, February 7, 1930.”

#### TESTIMONY OF DEFENDANT WILLIAM L. HUGHSON, IN HIS OWN BEHALF.

WILLIAM L. HUGHSON, one of the defendants, was produced, sworn and examined as a witness on his own behalf, and testified as follows:

##### Direct Examination.

To Mr. SULLIVAN.—On or about January 15th, 1930, I signed the original of the document now shown to me, and made out my personal check for \$100.00 payable to the Commissioner of Internal Revenue.

Thereupon, on behalf of defendant Hughson, Mr. Sullivan offered said document in evidence, and the

(Testimony of William L. Hughson.)

same was received, without objection, and marked, Defendant's Exhibit No. 3.

WITNESS.—(Continuing.) Neither the United States, nor any officer of the United States, nor the Collector of Internal Revenue, nor the Commissioner of Internal Revenue, nor the Treasurer of the United States, ever gave back, or returned to me, the one hundred dollar check which has been offered in evidence here, nor was any sum of \$100.00 ever paid to me by the Government thereafter under the claim that it was the same \$100.00 that I deposited with the Government as shown by said check, on the Hibernia Savings & Loan Society.

#### Cross-examination.

To Miss PHILLIPS.—Shortly after a letter of April, 1930, in which [51] I was notified the offer of compromise was rejected, Mr. McLaughlin, the Collector, offered me \$100.00. I declined to accept the \$100.00 on advice of counsel. After I signed the offer of compromise, dated January 15th, 1930, I gave it to Mr. Sullivan. I do not remember any letter, or telephone conversation with the Collector's office about the 4th, 5th, or 6th of February, 1930, regarding this offer of compromise.

Thereupon the witness identified his signature on a document marked "Offer in compromise, Form 656," which said document was thereupon marked Plaintiff's Exhibit 1 for Identification.

Thereupon defendant Hughson offered, and there was admitted in evidence without objection, a let-



(Testimony of John P. McLaughlin.)

ter dated January 8th, 1930, addressed to Harry F. Sullivan, and signed by Mr. Charest of the General Counsel's Office, Bureau of Internal Revenue, Washington, D. C., and a letter dated January 15th, 1930, sent by Harry F. Sullivan to the General Counsel's Office, Bureau of Internal Revenue, Washington, D. C. Both of said letters were marked Defendant's Exhibit No. 4.

Thereupon defendant Hughson rested.

TESTIMONY OF JOHN P. McLAUGHLIN, FOR  
PLAINTIFF (RECALLED IN REBUT-  
TAL).

JOHN P. McLAUGHLIN, recalled on behalf of plaintiff, rebuttal, testified as follows:

To Miss PHILLIPS.—Mr. Hughson's check for \$100.00, together with the offer of compromise, Defendant's Exhibit No. 3, was sent to me by the Commissioner at Washington with a request to have Form No. 656 executed. Mr. Hughson was advised to that effect, and this Form No. 656, marked Plaintiff's Exhibit No. 1 for Identification, was sent to Mr. Hughson, and he executed it. Then the offer was accepted, and the \$100.00 was placed in my special deposit account pending action by the [52] Department on the offer in compromise. When the offer was rejected, I tendered, by telephone, the check to Mr. Hughson, and he refused to accept it. It is more than likely that we filled out Form 656, and sent it to Mr. Hughson to sign. Subsequently, I received back from Mr. Hughson,

(Testimony of John P. McLaughlin.)

with his signature on it, Form 656, which is the document marked Plaintiff's Exhibit No. 1 for Identification, and I kept his check for \$100.00. In depositing the money in a special account pending action on the offer in compromise I followed the customary procedure of my office.

Thereupon said Plaintiff's Exhibit No. 1 for Identification was offered in evidence, and defendant Hughson objected thereto upon the ground that it was immaterial, irrelevant, and incompetent so far as defendant Hughson was concerned; that it was not a part of the original offer which was made by Hughson on the 15th of January, 1930, and therefore could not modify and vary in any way, or form the offer made by Hughson on the 15th of January, 1930, with which the \$100.00 check was sent back to Washington.

Thereupon the Court overruled said objection, and said document was admitted in evidence and marked Defendant's Exhibit No. 2.

Mr. SULLIVAN.—Exception.

EXCEPTION No. 4.

Cross-examination.

To Mr. SULLIVAN.—My records show that a check was drawn on May 12th, 1930, for \$100.00, in favor of W. L. Hughson, and was returned to the Commissioner on November 24th, 1930.

Thereupon plaintiff moved for a judgment according to the prayer on the complaint on the four causes of action. The case was thereupon submitted upon briefs to be thereafter filed. [53]

BE IT FURTHER REMEMBERED that thereafter, defendant, Hughson, through his attorney, in presenting his brief, moved for a judgment in favor of defendant Hughson. [54]

PLAINTIFF'S EXHIBIT No. 1.  
UNITED STATES OF AMERICA.  
TREASURY DEPARTMENT,  
WASHINGTON.

January 17, 1931.

PURSUANT to the provisions of Section 661, Chapter 17, Title 28 of the United States Code (Section 882 of the Revised Statutes of the United States) I hereby certify that the annexed are true copies of Assessment Certificate and that portion of the May, 1925, Special #9, Income Tax Assessment list—1st California collection district—showing additional assessments of \$1,208.02, \$882.07, \$631.81 and \$447.20 and penalty in the amounts of \$604.01, \$441.04, \$315.90 and \$223.60, for the years 1920, 1921, 1922, and 1923, respectively against Carl O. Hader, San Francisco, California, on file in this Department.

IN WITNESS WHEREOF, I have hereunto set my hand, and caused the seal of the Treasury Department to be affixed, on the day and year first above written.

By Direction of the Secretary of the Treasury:  
(Seal) F. A. BIRGFELD, (Signed)

F. A. BIRGFELD,  
Chief Clerk, Treasury Department.

MK W.M. BAMR ETK RES CMC B

## ASSESSMENT CERTIFICATE.

1st District of California. Month—May. Special  
#9. Year—1925.

Additional Assessments

Income Tax Division, \_\_\_\_\_,  
Chief of Division.

Lists as to tax and payments compared and found  
to agree with control ledger.

\_\_\_\_\_,  
Bookkeeper.

I HEREBY CERTIFY that the individuals,  
firms, and corporations reported by me on the at-  
tached lists are liable for the amount of taxes, pen-  
alties, etc., entered opposite their names, and that  
the amounts thereof are as follows:

Dated at \_\_\_\_\_.

Office of Collector of Internal Revenue. \_\_\_\_\_,  
192—.

\_\_\_\_\_,  
Collector of Internal Revenue.

List Returns Filed	Excess Collections	Total Tax
	Personal	4 808.10

Totals reported by collector.

Differences found by commissioner.

Items reported by commissioner.

Total Assessment	4 808.10
------------------	----------

I HEREBY CERTIFY that I have made inquir-  
ies, determinations and assessments of taxes, pen-  
alties, etc., of the above classification specified in  
these lists, and find that the amount of taxes, pen-

alties, etc., stated as corrected by the statement of differences and as specified in the supplementary pages of this list made by me are due from the individuals, firms and corporations opposite whose names such amounts are placed and the *the* amount chargeable to the collector is as above.

D. W. BLAIR, (Sgd.)

Commissioner of Internal Revenue.

Dated at Washington, D. C.

Office of Commissioner of Internal Revenue, May 14th, 192—. [56]

### INSTRUCTIONS.

JB JJM WLM MS.

This form must be made each month in quadruplicate by each tax division. The original and first copy must be forwarded with the duplicate copies of the monthly lists (Form 23A) to the Commissioner within ten days after the close of the month. The second copy must be submitted with the original and duplicate Form 820 to the Accounts and Collections Unit within ten days after the close of the month. One copy of this certificate (Form 23C) will be returned to the Collector accompanied by a statement of differences on Form 23D, (if errors are found), and by additional sheets (Form 23A) containing items assessed additionally by the Commissioner.

## ASSESSMENT LIST.

District. 1st California Income Tax List. May,  
1925. Special No. 9.

				New	
	Date.	Debit.	Credit.	Balance.	Remarks.
0	Hader Carl O	1208 02			
	San Francisco	Pen 604 01	1812 03		1920 1040 0A
	Calif.				Dummy Sec 274L
	May 00 P SPL NO 9				Tele Asst
1	Hader Carl O				
	San Francisco	882 07			
	Calif	Pen 441 04	1323 11		1921 1040 0A
					Dummy Sec 274L
					Tele Asst
	May 01 P Spl No 9				
2	Hader Carl O				
	San Francisco	631 81			
	Calif.	Pen 315 90	947 71		1922 1040 0A
					Dummy Sec 274L
					Tele Asst
	May 02 P. Spl No. 9.				
3	Hader Carl O				
	San Francisco, Calif	447 20			
		Pen 223 60	670 80		1923 1040 0A
					Dummy Sec 274D
					Tele Asst
	May 03 P. Spl No. 9				

PLAINTIFF'S EXHIBIT No. 2.

Form 656—Revised  
March, 1929  
TREASURY  
DEPARTMENT  
Internal Revenue  
Service

OFFER IN COMPROMISE

FOR USE OF  
COLLECTOR

To be filed with collector for your district  
Forms to be submitted in duplicate

Class  
of tax .....

William L. Hughson—

Special deposit  
account No. ....

(Name of taxpayer)

Market & 11th Sts., San Francisco—Calif.

Serial  
No. ....

(Address of taxpayer)

Date Jan. 30, 1930.

Amount  
paid, \$ .....

Commissioner of Internal Revenue:

(Cashier's stamp)

Through the Collector of Internal Revenue  
at San Francisco—California.

Certified Check.  
Cash. M. O.

Sir:

The following offer in compromise is sub-  
mitted to you by the undersigned:

Charges of violation of law or failure to meet an  
internal revenue obligation have been made against  
the taxpayer named above as follows: In settle-  
ment of Income Tax liability of Carl O. Hader  
(State specifically the pending charge and/or kind of tax and period  
involved)

for the years 1920 to 1924, inclusive.

.....

Date and place of alleged violation Jan. 25, 1930,  
San Francisco—x Calif.

The alleged violation or failure is due to the fol-  
lowing cause or causes: See attached statement.

(State in detail)

.....

The sum of \$100.00 is hereby tendered volun-  
tarily with request that it be accepted as a com-

promise offer and that release be granted the undersigned from the following liability resulting from the violation or failure specified:

.....

The following facts and reasons are submitted as grounds for acceptance of the offer: As per statement attached hereto.

.....

(If space provided is insufficient, attach supplemental affidavit and supporting evidence)

It is understood that this *offer* does not afford relief from the liability incurred unless and until it is actually accepted by the Commissioner with the advice and consent of the Secretary of the Treasury, and for cases in suit with the recommendation of the Attorney General of the United States, costs, if any, to be paid by the undersigned.

In making this offer, and as a part of the consideration thereof, the taxpayer hereby expressly agrees that all payments and other credits heretofore made to the account(s) for the year(s) under consideration, for which an unpaid liability exists, shall be retained by the United States, and, in addition, the taxpayer hereby expressly waives—

1. Any and all claims to refunds or overpayments to which he may be entitled under the internal revenue laws for any years, calendar or fiscal, or any period fixed by law, expiring prior to the date of acceptance of the offer, due through overpayment of any tax, interest, or penalty, or interest on overpayments or otherwise, as is not in excess of the difference between the tax liability sought to be compromised herewith and the amount



herein offered, and agrees that the United States may retain such refunds or overpayments, if any.

2. The benefit of any statute of limitations affecting the collection of the liability sought to be compromised, and in the event of the rejection of the offer, expressly consents to the extension of any statute of limitations affecting the collection of the liability sought to be compromised by the period of time (not to exceed two years) elapsed between the date of the filing of this offer and the date on which final action thereon is taken.

.....  
(If offer is made by agent, the reason therefor must be stated on this line)

(Signed) W. L. HUGHSON,  
(Signature of taxpayer or agent)

.....  
(Address of agent)

Sworn and subscribed before me this 4th day of February, 1930.

(Signed) NEVA A. KEMPER, Notary Public.  
(Signature of officer administering oath)

Waiver of statute of limitations is hereby accepted, and offer will be considered and acted upon in due course.

.....,  
Commissioner of Internal Revenue.  
By .....,  
Collector of Internal Revenue.

## COLLECTOR'S RECOMMENDATION.

Rejected Schedule.

#2556 4/23/30.

Commissioner of Internal Revenue, Washington,  
D. C.:

Herewith is an offer made by William L. Hughson, 11th & Market Sts., S. F. Cal., in compromise of liability incurred because In settlement of Income Tax liability of Carl O. Hader for the years 1920 to 1924, inclusive.

Return was filed on Form 1040 for 1920 to 1924  
(Period)  
incl., on May, 1925.

(Date)

This case is (not) in suit.

Record of Assessments and Payments,  
Entries in detail to be made by the Collector.  
Show in the tenth column by symbols "Pd.," "Ab.,"  
or "Cr.," the nature of each entry in eighth column.

Kind of Assessment, Tax, Penalty, Interest, and Taxable Year	List	Year	Month	Account No.		Amount Paid, Abated, or Credited Date Amount	Balance Due	Pd) Sched Ab.)	Cr.) Numb.
				Page	Line				
Income-20	Comm.	1925	May	00-P-Sp.	#9-		\$1812 03	IT	#18-
1921	"	1925-	"	01-P-Sp.	#9-		1323 11	"	#18-
1922	"	1925-	"	02-P-Sp.	#9-		947 71	"	#18-
1923	"	1925-	"	03-P-Sp.	#9-		670 80	"	#18-

See memo. attached for original assessment on above accounts.

Offer in compromise in lieu of outstanding liability for 1920—to 1924—incl.

COMPROMISE OFFER.

DEMANDS ISSUED

Amount of previous tender. \$.....	Form 17—Date	5/15/25
Amount of this tender.... \$100.00	69—	2/18/28—

Total amount offered.....

Was a notice of lien filed?.....  
(If so, when and where)

Was a bond for collection filed?  
(If so, furnish copy of same)

Was a collection waiver filed?.....  
(If so, furnish copy of same)

I recommend that the offer be Rejected for the  
(Accepted or rejected)

following reasons (state same in full):

Date signed Feb. 10th, 1930.

.....,  
Collector.....District of 1st Calif.

MEMO. OF ACCOUNT OF CAROL O. HADER.

Carl. O. Hader—

Tax. Paid; Bal. Due.

c/o Wm. L. Hughson....\$1208.02

San Francisco-Calif. Pen. 604.01      \$1812.03

1925—May 00—P—Sp. #9—

1920—1040—0A. Sec. 274—D.

Tax. Paid; Bal. Due.

Carl. O. Hader—

San Francisco-Calif. . . .	\$ 882.07	
Pen. . . . .	441.04	\$1323.11

1925—May 01—P. Sp. #9—

1921—1040—0A. Sec. 274—D.

Tax. Paid; Bal. Due.

Carl. O. Hader—

San Francisco-Calif. . . .	\$ 631.81	
Pen. . . . .	315.90	\$ 947.71

1925—May 02—P. Sp. #9—

1922—1040—0A. Sec. 274—D.

Tax. Paid; Bal. Due.

Carl O. Hader—

San Francisco-Calif. . . . .	\$447.20	
Pen. . . . .	223.60	\$ 670.80

Total Outstanding—\$4753.65—

1925—May 03—P. Sp. #9—

1923—1040—0A. Sec. 274—D.

Forms—17—issued 5/15/25—

Forms—69—issued 2/18/28—[58]

DEFENDANT'S EXHIBIT No. 1.

COPY.

No. 22995.

WARRANT FOR DISTRAINT.

UNITED STATES OF AMERICA

1st Collection District, State of California

To \_\_\_\_\_,

Deputy Collector.

WHEAEAS, in pursuance of the provisions of the acts of Congress relating to internal revenue the below named person or persons is or are liable to pay the tax or taxes assessed against him, or them, in the amount or amounts named hereinbelow, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; AND WHEREAS, ten days have elapsed since notice was served and demand made upon said person or persons for payment of said tax or taxes; AND WHEREAS, said person or persons still neglect or refuse to pay the same, YOU ARE HEREBY COMMANDED to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes as may be necessary to satisfy the tax or taxes, with 5 per centum additional upon the amount of the tax or taxes, and interest at the rate of 1 per centum per month from the time the tax or taxes became due, and also such further sum as shall be sufficient for

the fees, costs, and expenses of the levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixteenth day after the execution hereof. [59]

1. Name—Carl O. Hader.
2. Location—21 Hillway Ave., San Francisco, Calif.

3. Description of Tax:

Add'l 1920 Income

1040 OA Dummy

Sec. 274 D Tele. Asst.

Income Sales Pro-Narc Misc.

Amount of Tax . . . . 1812.03

Amount of penalty

and interests

Int. 33 mos. at  $\frac{1}{2}\%$ . 298.98

Total tax, penalty

and interest . . . . . \$2111.01

Amount of additional interest due from date of issue 2/15/28.

4. Date of Notice and Demand (Form 1-17)  
5/15/25 List May, 1925. Serial No. Spl.  
#9-OOP.

5. Date or Notice and Demand (Form 1-21) List  
— Serial No.

Witness my hand and official seal at San Francisco this 18th day of February, 1928.

Signed—JOHN P. McLAUGHLIN,

Collector of Internal Revenue,

1st Internal Revenue Collection, District of California.

Tax .....	\$1208.02
Pen. ....	604.01

—————  
\$1812.03

(See instructions on reverse side.) [60]

RETURN OF DEPUTY COLLECTOR.

\*I hereby certify that, pursuant to the herein warrant of distraint I proceeded to levy upon and sell the property herein described in order to satisfy the taxes, penalties, and interest herein stated and required by law, and that all the provisions of law were strictly complied with; that the property was sold at public auction, after due notice, to the highest bidders at the prices herein stated:

1. Date of receipt of warrant—————
2. Date of notice of sale—————
3. Description of property levied upon—————
4. Notice of sale:  
By publication in newspaper at—————  
By posting notice at following places—————
5. Name of Purchaser—————

—————  
\*I have not executed the within warrant for the following reasons:

- |                              |       |         |
|------------------------------|-------|---------|
| 6. Amount received from sale | _____ | \$_____ |
| 7. Cost of levy and sale     | _____ | \$_____ |
| 8. Net Proceeds              | _____ | \$_____ |

The gross proceeds, amounting to \$\_\_\_\_\_, are herewith inclosed.

Dated at \_\_\_\_\_, 192—,

\_\_\_\_\_,  
Deputy Collector.

\*Strike out lines inapplicable.

### INSTRUCTIONS.

For all warrants of distraint on which it necessary to make seizures and sales the collector will make a docket entry on Record 44, which entry should be substantially a transcript of the schedule on the inside of the warrant. Each warrant should be numbered and the number and name of the deputy to whom issued entered on Form 824. This will enable the collector to readily trace every warrant issued and insure its prompt return. Upon the return of the warrant by the deputy the entries on Form 824 should be completed, so that it will [61] give a complete history of all proceedings on said warrant, and in case of the sale of real estate, proper entries should also be made in Record 21. Upon the execution of the warrant it should be properly returned to the collector, with a report showing, in full, what action was taken in each case. A report on Form 210 should be made to the Commissioner of Internal Revenue in all cases where personal property is sold under a warrant for distraint.



Sixty days are deemed ample time for the execution and return of a warrant for distraint by a deputy collector. When report is delayed beyond that time the delinquent deputy should be called on for an explanation of the cause of such delay, and if not satisfactory the collector will require the deputy to execute and return the warrant at once.

When a warrant for distraint is returned with the report of no property found liable to distraint, the deputy so reporting must accompany the return warrant with his affidavit on Form 53.

Attention of distraining officers is called to the following provisions of law: "Provided, That there shall be exempt from distraint and sale, if belonging to the head of a family, the schoolbooks and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed fifty dollars; the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools or implements, of a trade or profession, to an amount not greater than one hundred dollars, shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt." [62]

## DEFENDANT'S EXHIBIT No. 1.

COPY.

No. 22995.

## WARRANT FOR DISTRAINT.

UNITED STATES OF AMERICA,

1st Collection District, State of California.

To \_\_\_\_\_,

Deputy Collector.

WHEREAS, in pursuance of the provisions of the acts of Congress relating to internal revenue the below named person or persons is or are liable to pay the tax or taxes assessed against him, or them, in the amount or amounts named herein below, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; AND WHEREAS, ten days have elapsed since notice was served and demand made upon said person or persons for payment of said tax or taxes; AND WHEREAS, said person or persons still neglect or refuse to pay the same, YOU ARE HEREBY COMMANDED to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes as may be necessary to satisfy the tax or taxes, with 5 per centum additional upon the amount of the tax or taxes, and interest at the rate of 1 per centum per month from the time the tax or taxes became due, and also such further sum as shall be sufficient for

the fees, costs, and expenses of the levy; but if sufficient goods, chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof. [63]

1. Name—Carl O. Hader.

2. Location—21 Hillway Ave., San Francisco, Calif.

3. Description of Tax:

Add'l 1921.

1040 0A.

Dummy Sec. 274D.

Tele Asst.

Income Sales Pro-Nard Misc.

Amount of Tax . . . 1323.11

Amount of penalty

and interest . . . . 218.31

---

Total tax, penalty

and interest . . . . 1541.42

Amount of additional interest due from date of issue 2/15/28.

4. Date of Notice and Demand (Form 1-17)

5/15/25 List May, 1925. Serial No. Spl.

#9-01P.

5. Date of Notice and Demand (Form 1-21) List  
 —. Serial No.

Witness my hand and official seal at San Francisco this 18th day of February, 1928.

(Signed) JOHN P. McLAUGHLIN,  
 Collector of Internal Revenue, 1st Internal Revenue  
 Collection District of California.

Tax .....	882.07
Pen. ....	441.04

---

\$1323.11

(See instructions on reverse side.) [64]

#### RETURN OF DEPUTY COLLECTOR.

\* I hereby certify that, pursuant to the herein warrant of distraint I proceeded to levy upon and sell the property herein described in order to satisfy the taxes, penalties, and interest herein stated and required by law, and that all the provisions of law were strictly complied with; that the property was sold at public auction, after due notice, to the highest bidders at the prices herein stated:

1. Date of receipt of warrant \_\_\_\_\_
2. Date of notice of sale \_\_\_\_\_
3. Description of property levied upon \_\_\_\_\_
4. Notice of sale: \_\_\_\_\_  
 By publication in newspaper at \_\_\_\_\_  
 By posting notice at following places: \_\_\_\_\_
5. Name of Purchaser \_\_\_\_\_
6. Amount received from sale \_\_\_\_\_ \$ \_\_\_\_\_
7. Cost of Levy and sale \_\_\_\_\_ \$ \_\_\_\_\_
8. Net Proceeds \_\_\_\_\_ \$ \_\_\_\_\_

\* Strike out lines inapplicable.

The gross proceeds, amounting to \$——, are herewith inclosed.

\* I have not executed the within warrant for the following reasons:

Dated at ——, 192—

\_\_\_\_\_,  
Deputy Collector.

---

### INSTRUCTIONS.

For all warrants of distraint on which *it necessary* to make seizures and sales the collector will make a docket entry on Record 44, which entry should be substantially a transcript of the schedule on the inside of the warrant. Each warrant should be numbered and the number and name of the deputy to whom issued entered on Form 824. This will enable the collector to readily trace every warrant issued and insure its prompt return. Upon the return of the warrant by the deputy the *entires* on Form 824 should be completed, so that it will [65] give a complete history of all proceedings on said warrant, and in case of the sale of real estate, proper *entires* should also be made in Record 21. Upon the execution of the warrant it should be properly returned to the collector, with a report showing, in full what action was taken in each case. A report on Form 210 should be made to the Commissioner of Internal Revenue in all cases where personal property is sold under a warrant for distraint.

Sixty days are deemed ample time for the execution and return of a warrant for distraint by a

deputy collector. When report is delayed beyond that time the delinquent deputy should be called on for an explanation of the cause of such delay, and if not satisfactory the collector will require the deputy to execute and return the warrant at once.

When a warrant for distraint is returned with the report of no property found liable to distriant, the deputy so reporting must accompany the return warrant with his affidavit on Form 53.

Attention of distraining officers is called to the following provisions of law: "Provided, That there shall be exempt from distraint and sale, if belonging to the head of a family, the schoolbooks and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed fifty dollars; the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools or implements, of a trade or profession, to an amount not greater than one hundred dollars, shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt." [66]

DEFENDANT'S EXHIBIT No. 1.

COPY.

No. 22995.

WARRANT FOR DISTRAINT.

UNITED STATES OF AMERICA,

1st Collection District, State of California.

To \_\_\_\_\_,

Deputy Collector.

WHEREAS, in pursuance of the provisions of the acts of Congress relating to internal revenue the below named person or persons is or are liable to pay the tax or taxes assessed against him, or them, in the amount or amounts named hereinbelow, together with penalties and interest prescribed by law for failure to pay said tax or taxes when the same became due; AND WHEREAS, ten days have elapsed since notice was served and demand made upon said person or persons for payment of said tax or taxes; AND WHEREAS, said person or persons still neglect or refuse to pay the same, YOU ARE HEREBY COMMANDED to levy upon, by distraint, and to sell so much of the goods, chattels, effects, or other property or rights to property including stocks, securities, and evidences of debt, of the person or persons liable as aforesaid, or on which a lien exists for the tax or taxes as may be necessary to satisfy the tax or taxes, with 5 per centum additional upon the amount of the tax or taxes, and interest at the rate of 1 per centum per month from the time the tax or taxes became due,

and also such further sum as shall be sufficient for the fees, costs, and expenses of the levy; but if sufficient goods chattels, or effects are not found, then you are hereby commanded to seize and sell in the manner prescribed by law so much of the real estate of said person or persons, or on which a lien exists for the tax or taxes, as may be necessary for the purposes aforesaid. You will do all things necessary to be done in the premises and strictly comply with all requirements of law, and for so doing this shall be your warrant, of which make due return to me at this office on or before the sixtieth day after the execution hereof. [67]

1. Name—Carl O. Hader,
2. Location 21 Hillway Ave., San Francisco, Calif.
3. Description of Tax:

Add'l 1922 Income.

1040 0A Dummy.

Sec. 274 D Tele Asst.

Income Sales Pro-Narc Misc.

Amount of tax . . . . . 947.71

Amount of penalty  
and interest. Int.

33 mos. at  $\frac{1}{2}\%$  . . . . . 156.37

---

Total tax, penalty,  
and interest . . . . . 1104.08

Amount of additional interest due from date of issue 2/15/28.

4. Date of Notice and Demand (Form 1-17)  
5/15/25. List May, 1925. Serial No. Spl.  
#9-02P.



5. Date of Notice and Demand (Form 1-21)  
List ——. Serial No.

Witness my hand and official seal at San Francisco this 18th day of February, 1928.

Tax .....\$631.81

Pen. ....\$315.90

—————  
\$947.71

(Signed) JOHN P. McLAUGHLIN,  
Collector of Internal Revenue, 1st Internal Revenue Collection, District of California.

(See instructions on reverse side.) [68]

RETURN OF DEPUTY COLLECTOR.

\* I hereby certify that, pursuant to the herein warrant of distraint I proceeded to levy upon and sell the property herein described in order to satisfy the taxes, penalties, and interest herein stated and required by law, and that all the provisions of law were strictly complied with; that the property was sold at public auction, after due notice, to the highest bidder at the prices herein stated:

1. Date of receipt of warrant \_\_\_\_\_

2. Date of notice of sale \_\_\_\_\_

3. Description of property levied upon \_\_\_\_\_

4. Notice of sale:

By publication in newspaper at \_\_\_\_\_

By posting notice at following places:\_\_\_\_\_

5. Name of Purchaser \_\_\_\_\_

6. Amount received from sale \_\_\_\_\_\$\_\_\_\_\_

7. Cost of levy and sale \_\_\_\_\_\$\_\_\_\_\_

8. Net Proceeds \_\_\_\_\_\$\_\_\_\_\_

\_\_\_\_\_

The gross proceeds, amounting to \$——, are herewith inclosed.

\* I have not executed the within warrant for the following reasons:

Dated at ——, 192—,

\_\_\_\_\_,  
Deputy Collector.

\* Strike out lines inapplicable.

### INSTRUCTIONS.

For all warrants of distraint on which *it necessary* to make seizures and sales the collector will make a docket entry on Record 44, which entry should be substantially a transcript of the schedule on the inside of the warrant. Each warrant should be numbered and the number and name of the deputy to whom issued entered on Form 824. This will enable the collector to readily trace every warrant issued and insure its prompt return. Upon the return of the warrant by the deputy the entries on Form 824 should be completed, so that it will [69] give a complete history of all proceedings on said warrant, and in case of the sale of real estate, proper entries should also be made in Record 21. Upon the execution of the warrant it should be promptly returned to the collector, with a report showing, in full, what action was taken in each case. A report on Form 210 should be made to the Commissioner of Internal Revenue in all cases where personal property is sold under a warrant for distraint.

Sixty days are deemed ample time for the execu-

tion and return of a warrant for distraint by a deputy collector. When report is delayed beyond that time the delinquent deputy should be called on for an explanation of the cause of such delay, and if not satisfactory the collector will require the deputy to execute and return the warrant at once.

When a warrant for distraint is returned with the report of no property found liable to distraint, the deputy so reporting must accompany the return warrant with his affidavit on Form 53.

Attention of distraining officers is called to the following provisions of law: "Provided, That there shall be exempt from distraint and sale, if belonging to the head of a family, the schoolbooks and wearing apparel necessary for such family; also arms for personal use, one cow, two hogs, five sheep and the wool thereof, provided the aggregate market value of said sheep shall not exceed fifty dollars; the necessary food for such cow, hogs, and sheep, for a period not exceeding thirty days; fuel to an amount not greater in value than twenty-five dollars; provisions to an amount not greater than fifty dollars; household furniture kept for use to an amount not greater than three hundred dollars; and the books, tools or implements, of a trade or profession, to an amount not greater than one hundred dollars, shall also be exempt; and the officer making the distraint shall summon three disinterested householders of the vicinity, who shall appraise and set apart to the owner the amount of property herein declared to be exempt." [70]

## DEFENDANT'S EXHIBIT No. 3.

State of California,  
City and County of San Francisco,—ss.

William L. Hughson, being first duly sworn, says that he is a resident of the City and County of San Francisco, State of California; that in August, 1925, affiant signed bonds as surety for Carl A. Hader, which bonds were signed for the express purpose of staying the collection of certain deficiency taxes claimed to be due upon the income of Carl A. Hader for the years 1920 to 1924 inclusive, pending an appeal.

Said appeal of Carl A. Hader from the assessment of said deficiency taxes for the years 1920 to 1924 inclusive, was not perfected and in fact was dismissed on motion made by the Commissioner of Internal Revenue, and a hearing upon the merits thereof was never had.

After affiant signed said bonds, and in the early part of 1926, affiant discovered that said Carl A. Hader, who had previously been employed as the private secretary to affiant, had for many years prior to 1926 been embezzling money from the William L. Hughson Company, a Corporation, of which affiant was, and is, the president and owner of fifty (50) per cent of the stock thereof, and from Hughson & Merton Incorporated, a Corporation, of which corporation affiant owns one hundred (100) per cent of the stock during all of the said times.

Affiant has not been able to trace the peculations and embezzlements of Hader prior to the year 1922, but for five years, from 1922 to 1926, said Hader

embezzled from the William L. Hughson Company over thirty-one thousand (31,000) dollars, and from Hughson & Merton over eighteen thousand (18,000) dollars.

Considering the methods used by said Hader in effecting said embezzlements, affiant feels quite positive in asserting that similar acts of embezzlement were committed by Hader during 1920 and 1921, and by reason of the embezzlements, hereinabove specifically referred to, this affiant has sustained the loss of over fifteen thousand (15,000) dollars by reason of said embezzlement from the William L. Hughson Company, and a loss of approximately eighteen thousand (18,000) dollars by reason of said embezzlements, of Hader, from Hughson & Merton.

The losses occasioned by said acts of embezzlement, above referred to, have not been made good either to Hughson & Merton, or to said William L. Hughson Company by said Carl A. Hader, or by any person for him, or on his behalf.

Affiant is informed and believes, and upon such information and belief alleges that the Bureau of Internal Revenue in fixing the deviciency in tax due upon the alleged income of said Hader for the years 1920 to 1924 inclusive based it largely upon the deposits made by said Hader in the bank account in which he deposited his money, which account was kept in the [71] name of his wife, E. A. Hader. It is practically impossible at this late date, after so many years have elapsed, to analyze all of the deposits made by Hader in said account kept in

the name of E. A. Hader, and neither said Carl A. Hader or E. A. Hader have any memoranda or data which would show these details, nor have they retained, nor is there in existence any of the checks drawn against said account.

One item in the Revenue Agent's Report of the income of said Hader for the year 1920 charges Hader with having received as income, a certain item or eight thousand (8,000) dollars. This one item I have been able to trace, and I can say, positively, that it was not properly treated as income of said Carl A. Hader, either in 1920, or at any other time. This sum of eight thousand (8,000) dollars was represented by a check given to Mr. Hader by Mr. Worth Hall, a resident of Detroit, and having his office at this time, at the General Motors Building, Detroit. Out of this eight thousand (8,000) dollar check, which Mr. Hall gave to Mr. Hader, five thousand (5,000) dollars of it was used to purchase stock in a certain corporation, and three thousand (3,000) dollars of it was returned by Hader to Mr. Hall, all of which will appear from a letter written by Mr. Hall to my attorney, Mr. Harry F. Sullivan, which letter is attached hereto.

In view of the entire situation, as hereinabove outlined, and without admitting, in any way, legal liability upon the bonds in question, I hereby offer to pay the sum of one hundred (100) dollars in compromise of my claim which the government feels it has against me by reason of my signing said bonds.

(Signed) WILLIAM L. HUGHSON.

Subscribed and sworn to before me this 15th day of January, 1930.

NEVA A. KEMPER,  
Notary Public, in and for the City and County of  
San Francisco, State of California. [72]

DEFENDANT'S EXHIBIT No. 4.

TREASURY DEPARTMENT,  
BUREAU OF INTERNAL REVENUE,  
WASHINGTON.

January 8, 1930.

Office of  
The General Counsel  
Address Reply to the Gen-  
eral Counsel Bureau of In-  
ternal Revenue and Refer to  
GC:C:ETK.  
236823.

Harry F. Sullivan, Esq.,  
Humboldt Bank Building,  
San Francisco, California.

In re: Carl O. Hader, San Francisco, California.

Sir: Reference is made to your letter of July 30, 1929, in which you advised that you were obtaining certain information which you believed would justify the acceptance of an offer in compromise in settlement of the bond liability of the above named taxpayer concerning outstanding income taxes for the years 1920 to 1923, inclusive.

Please be advised that this office has heard nothing further from you nor has an offer in compromise

been received. Unless some definite action is taken by you within the next few days in the matter of settling the liability involved it will be necessary for this office to institute suit on the bond in said case because the Government does not desire to let the case remain in its present unsatisfactory status any longer.

Kindly advise as to your intention with respect to settlement at your early convenience.

Respectfully,

C. M. CHARESH (?)

em

General Counsel.

January 15th, 1930.

GC:C:ETK.

236823.

General Counsel,

Bureau of Internal Revenue,

Washington, D. C.

In Re Carl A. Hader.

Sir: Replying to your letter of January 8th, 1930, regarding the liability of William L. Hughson on bonds of Carl A. Hader. [73] While in Washington in June of last year I spoke with Mr. F. E. Kemper, regarding this matter, discussed with him the question of legal liability of Hughson, and also discussed with him the facts, and told him that later I would attempt to prepare and send him an offer of compromise for Mr. Hughson in this matter. Various conditions have prevented me from doing this earlier.

However, I am sending you, herewith, an offer from Mr. Hughson, together with check for one



hundred (100) dollars, and in support thereof. I will say that I feel when you have reviewed the facts set forth in his offer of compromise, you will conclude that he should not be called upon, to pay any money by reason of any deficiency taxes alleged to be due on the income of Carl A. Hader.

Respectfully yours,

HARRY F. SULLIVAN.

HFS:MJ. [74]

The foregoing constitutes a condensed statement of the testimony of the witnesses for the respective parties, given upon the trial of the above entitled cause, and also all of the exhibits offered and introduced in evidence, by the respective parties hereto, and admitted in evidence by the Court, at the trial of said cause.

Dated: September 24th, 1931.

HARRY F. SULLIVAN,

Attorney for Defendant William L. Hughson,

I, Harold Louderback, Judge of the above-entitled court, hereby certify that the foregoing bill of exceptions contains the substance of all the testimony, and also all of the exhibits admitted in evidence at the trial of this cause, and further proceedings had, and each exception stated to have been taken by counsel for defendant William L. Hughson, was so duly taken by him and duly allowed and noted by Court; and in order that each and every one thereof may be preserved and made of record, this bill of exceptions is duly settled, approved and signed, and ordered to be made of record in this cause.

Dated: October 13th, 1931.

HAROLD LOUDERBACK,  
United States District Judge.

Receipt of a copy of the within proposed bill of exceptions is admitted this 26 day of September, A. D. 1931.

GEO. J. HATFIELD,  
ESTHER B. PHILLIPS,  
*Attorney* for Plaintiff United States of America.

[Endorsed]: Filed Oct. 13, 1931. [75]

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[Title of Court and Cause.]

PETITION FOR APPEAL.

To the Hon. HAROLD LOUDERBACK, District Judge of the United States District Court, Southern Division, Northern District of California:

William L. Hughson, one of the defendants in the above-entitled action, feeling aggrieved by the judgment given, made, and entered therein on the 21st day of August, A. D. 1931, in favor of plaintiff, and against this defendant, hereby appeals from said judgment to the Circuit Court of Appeals of United States for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and respectfully prays that his appeal be allowed, and that citation be issued as provided by law, and that a copy of the record, opinion of the Court, bill of exceptions, assignment of errors, and all proceedings in the case, duly authenticated, be sent to the United

States Circuit Court of Appeals for the Ninth Circuit, under the rules of said court, in such case made and provided. [76]

And this petitioner further prays that the proper order be made herein, relating to the security required of this defendant and appellant pending said appeal.

Dated August 31st, 1931.

WILLIAM L. HUGHSON,

Petitioner, Defendant and Appellant.

HARRY F. SULLIVAN,

Attorney for Petitioner, Defendant and Appellant.

[Endorsed]: Filed Sep. 15, 1931. [77]

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[Title of Court and Cause.]

#### ASSIGNMENT OF ERRORS.

Now comes William L. Hughson, one of the defendants in the above-entitled cause of action, and files the following assignment of errors upon which he will rely in the prosecution of his appeal herein from the judgment made by this Court on the 21st day of August, 1931.

##### I.

That the United States District Court for the Northern District of California, Southern Division, erred in Finding "II" wherein said court finds that "on or about August 18th, 1925, said bonds were delivered to John P. McLaughlin, United States Collector of Internal Revenue at San Francisco,

and were duly accepted by said Collector and his Superiors," for the reason that there is no allegation in either of the four counts of plaintiff's complaints that all or any of said four bonds were duly accepted by said Collector or his superiors.

## II.

Said District Court erred in Finding "I" wherein it finds that the allegations of Paragraph "VI" of plaintiff's first, second, third and fourth causes of action are true, for [78] the reason that in Paragraph "VI" of each of said four causes of action, set forth in plaintiff's complaint, it is alleged that "said defendant filed an appeal with the United States Board of Tax Appeals," but in neither of said four causes of action is it alleged that any order, assessment, or determination had been made or was in existence at the time of the filing of the alleged appeal from which defendant Hader had any right to file an appeal; nor was there in existence at that time any order, assessment, or determination from which said defendant could take or file an appeal.

## III.

Said District Court erred in Finding "II" in finding that the four bonds in suit, which are attached as Exhibits "A," "B," "C" and "D," to plaintiff's complaint, were executed and given for a consideration, for the reason that each of said four bonds was executed in order to stay the collection of taxes from defendant Hader upon the express theory and statement that he had perfected an appeal whereas said appeal was prematurely and

improperly filed, and no appeal was ever perfected by said Hader, as there was no order or assessment then in existence with which such an appeal could have been taken and perfected by him.

#### IV.

Said District Court erred in failing to find that defendant Hughson received no consideration for the execution of the four bonds, Exhibits "A," "B," "C" and "D," attached to plaintiff's complaint, in that said bonds were each and all executed and predicated upon the belief that Hader had filed and perfected an appeal, whereas, in truth, and in fact, no appeal was ever perfected by Hader, and there was no order, determination, or assessment in existence at the time of the [79] filing of said alleged appeal from which said Hader could take, file, or perfect an appeal.

#### V.

Said District Court erred in giving and making its judgment herein in favor of plaintiff, and against the defendant Hughson, for the reason that there is no allegation in plaintiff's complaint, nor in either of the four causes of action therein set forth, nor is there any findings made by the Court to the effect that defendant Hader did not, after July 14th, 1928, and prior to the filing of the complaint herein, on January 7th, 1931, pay the taxes assessed against him.

#### VI.

Said District Court erred in failing to find, and in not finding, as alleged in defendant's answer, that the Commissioner of Internal Revenue accepted one

hundred (100) dollars from defendant Hughson on or about the 7th day of February, 1930, in compromise of whatever claims, plaintiff, or the Commissioner of Internal Revenue, had against defendant Hughson, based on, or arising out of, said four bonds, Exhibits "A," "B," "C" and "D," hereinabove referred to.

#### VII.

Said District Court erred in failing to find, and in not finding, that the cashing of the check of defendant William L. Hughson for one hundred (100) dollars, on February 7th, 1930, constituted an acceptance of the offer of compromise made by said defendant Hughson, which offer of compromise was sent by defendant Hughson, on or about the 15th of January, 1930, together with said check, to the Commissioner of Internal Revenue.

#### VIII.

Said District Court erred in failing to find, and in not finding, that the cashing, on February 7th, 1930, of the check of William L. Hughson for one hundred (100) dollars, [80] without at the time, advising said Hughson that said one hundred (100) dollars was not being accepted in compromise of any claims the Commissioner of Internal Revenue, or the plaintiff herein had against him, constituted in law, an acceptance of the offer of compromise of said claims.

#### IX.

Said District Court erred in failing to find, and in not finding, that each of the four causes of action set forth in plaintiff's complaint herein, was, and

is, barred by the provisions of Section 791, Article 28, of the United States Code.

X.

Said District Court erred in failing to find, and in not finding, that defendant Hader did not perfect an appeal to the Board of Tax Appeals, as provided in each of said four bonds, as the consideration therefor.

XI.

Said District Court erred in failing to find, and in not finding, that said defendant Hader did not take an appeal from any order or determination of the Commissioner of Internal Revenue, in regard to any income taxes assessed against said Hader for the years 1920, 1921, 1922 and 1923.

XII.

Said District Court erred in concluding, as a matter of law, that plaintiff is entitled to recover interest herein, after July 15th, 1928, at the rate of twelve (12) per cent per annum.

XIII.

Said District Court erred in permitting witness John P. McLaughlin, Collector of Internal Revenue, over objection of defendant, to answer the following question—"Q. Mr. McLaughlin, I now show you a certified copy of an assessment [81] certificate against Mr. Carl A. Hader, for various amounts covering several years. I would like to have you look at that and tell me when that assessment cer-

tificate came to your office, if you know. You can refresh your recollection with it.”

#### XIV.

Said District Court erred in permitting witness John P. McLaughlin, over objection of this defendant, to answer the question “Why not?” after said witness had testified that between August, 1925, and March, 1928, he did not take any steps to collection any taxes from Mr. Hader.

#### XV.

Said District Court erred in failing to grant this defendant’s motion to strike out the words “which cover the claims” as appears in the following answer to the following question—“Q. Did you have any reason for not attempting to make collection upon this assessment? A. The fact that I had bonds which covered the claims, and that the claims were pending, and until the claims were rejected there should be no action. After that we could proceed at any time. We had to.”

#### XVI.

Said District Court erred in admitting in evidence over the objection of this defendant, Plaintiff’s Exhibit No. 1, which is a certified copy of assessment-roll, showing taxes assessed against Carl A. Hader.

#### XVII.

Said District Court erred in admitting in evidence, over defendant’s objection, Plaintiff’s Exhibit No. 2, which is an offer of compromise on Form 656,



which was signed by defendant Hughson, after he had sent his check, for one hundred (100) dollars, and the offer of compromise, dated January 15th, 1930, to the Commissioner of Internal Revenue. [82]

WHEREFORE, defendant William L. Hughson, prays that said judgment of said District Court, be reversed in whole, and as to each of its parts, and that judgment be given and made herein, in favor of defendant William L. Hughson, and against the plaintiff, and that said William L. Hughson have, and recover his costs.

Dated August 31st, 1931.

WILLIAM L. HUGHSON,  
Defendant.

HARRY F. SULLIVAN,  
Attorney for Defendant, William L. Hughson.

[Endorsed]: Filed Sep. 15, 1931. [83]

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[Title of Court and Cause.]

ORDER ALLOWING APPEAL.

On Motion of Harry F. Sullivan, Esq., attorney and counselor for William L. Hughson, one of the defendants in the above-entitled cause, IT IS HEREBY ORDERED that an appeal to the Circuit Court of Appeals of the United States for the Ninth Circuit, from the judgment given and made herein on August 21st, 1931, be and the same is hereby allowed; and that a copy of the record, opinion

of the Court, assignment of errors, bill of exceptions, and all proceedings in the cause, duly authenticated, be forthwith transmitted to said Circuit of Appeals for the Ninth Circuit.

IT IS FURTHER ORDERED that the bond on appeal herein, the same to act as a supersedeas bond and also as a bond for costs and damages on appeal, be and the same is hereby fixed at the sum of \$11,800.00.

Dated: September 14, 1931.

HAROLD LOUDERBACK,  
United States District Judge.

Approved as to the amount.

GEO. J. HATFIELD,  
U. S. Attorney,  
By ESTHER B. PHILLIPS,  
Asst. U. S. Attorney.

[Endorsed]: Filed Sep. 15, 1931. [84]

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[Title of Court and Cause.]

#### SUPERSEDEAS ORDER.

William L. Hughson, one of the defendants herein, having, this day, been allowed an appeal herein from the judgment of this Court, in favor of plaintiff and against defendant,

IT IS ORDERED that said appeal shall operate as a supersedeas, said defendant and appellant, William L. Hughson, having executed a supersedeas

and cost bond in the sum of eleven thousand eight hundred (11,800) dollars, as provided by law, and the Clerk is hereby directed to stay the mandate of this District Court, until the further order of this Court.

Dated Sep. 14, 1931.

HAROLD LOUDERBACK,  
United States District Judge.

[Endorsed]: Filed Sep. 15, 1931. [85]

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[Title of Court and Cause.]

**SUPERSEDEAS AND COSTS BOND.**

**KNOW ALL MEN BY THESE PRESENTS:**

That we, the undersigned, William L. Hughson as principal, and American Bonding Company of Baltimore as surety, are held and firmly bound to the United States of America, in the full sum of eleven thousand eight hundred (11,800) Dollars, in lawful money of the United States, as a super-sedeas and costs bond, on the appeal taken from this court to the Circuit Court of Appeals, Ninth Circuit, by William L. Hughson, one of the defendants in the above-entitled cause, from the judgment given and rendered herein against him and in favor of plaintiff, on August 21st, 1931; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, administrators and successors, jointly and severally, by these presents.

Sealed with our seals this 10th day of September, A. D. 1931.

NOW, THEREFORE, The condition of the above obligation is such, that if the above bounden principal shall prosecute his said appeal to said Circuit Court of Appeals for the Ninth Circuit, to effect, and answer all damages, costs and interest, if he fail to make said appeal good, and if said judgment of said District Court be affirmed by said Circuit Court of Appeals, and shall be complied with in all respects by said principal, William L. Hughson, [86] or if said judgment be affirmed in part or modified, and shall be complied with by said principal, in all respects as so affirmed in part or as so modified, then this obligation to be void and of no effect; otherwise to remain in full force and effect.

IT IS EXPRESSLY AGREED, by the undersigned surety, that in case of the breach of the conditions hereof, the Court may, upon ten (10) days notice to said surety, proceed summarily in this cause to ascertain the amount which said surety is bound to pay on account of such breach, and may then immediately give and render judgment therefor against said surety and award execution therefor.

IN WITNESS WHEREOF, said principal has hereunto subscribed his name, and said surety, by its officers thereunto duly authorized, has hereunto subscribed its corporation name and affixed its

corporate seal this — day of September, A. D. 1931.

[Seal]

WILLIAM L. HUGHSON,

Principal.

AMERICAN BONDING COMPANY OF  
BALTIMORE,

By WALTER JARDINE,

Attorney-in-fact,

Surety.

The within and foregoing undertaking is approved September 14th, 1931.

HAROLD LOUDERBACK,

United States District Judge. [87]

State of California,

City and County of San Francisco,—ss.

On this 10th day of September, 1931, before me, S. Walter Burke, a notary public, in and for the county and state aforesaid, duly commissioned and sworn, personally appeared Walter Jardine known to me to be the person whose name is subscribed to the foregoing instrument as the attorney-in-fact of the American Bonding Company of Baltimore, and acknowledged to me that he subscribed the name of American Bonding Company of Baltimore thereto as principal and his own name as attorney-in-fact.

[Seal]

S. WALTER BURKE,

Notary Public in and for the State of California,  
County of San Francisco.

My commission expires July 30, 1935.



Dated: Sept. 14, 1931.

GEO. J. HATFIELD,  
United States Attorney.  
By ESTHER B. PHILLIPS,  
Asst. U. S. Attorney.

[Endorsed]: Filed Sep. 15, 1931. [89]

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[Title of Court and Cause.]

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please issue certified record to be used on appeal by the defendant William L. Hughson, from the judgment heretofore given, made and entered in and by the above-entitled court on the 21st day of August, 1931, in favor of plaintiff and against the defendant William L. Hughson, and have the same in the United States Circuit Court of Appeals, Ninth Circuit, at San Francisco, California, on or before the 15th day of November, 1931.

In preparing said record on appeal it is respectfully requested that it be made up of the following papers:

1. Complaint of plaintiff.
2. Answer of defendant William L. Hughson.
3. Stipulation waiving jury trial.
4. Bill of exceptions.
5. Findings of fact and conclusions of law.
6. Judgment.
7. Notice of entry of judgment.

8. Exceptions to findings.
9. Supersedeas order.
10. Petition for appeal.
11. Order allowing appeal.
12. Assignment of errors.
13. Supersedeas and costs bond.
14. Citation.
15. Admission of service of petition for appeal, order allowing appeal, supersedeas order, assignment of errors and exceptions to findings.
16. Praeceptum for record on appeal.
17. Clerk's return and certificate to record.

We respectfully request that the same be certified by you as required by law and the rules of the court, and that you further state in your certificate under seal, the cost of the record and by whom paid.

HARRY F. SULLIVAN,  
Attorney for Defendant, William L. Hughson,  
718 Humboldt Bank Building, San Francisco,  
California.

Received a copy of the within praecipe this 14th day of October, 1931.

GEO. J. HATFIELD,  
Attorney for Plaintiff.

[Endorsed]: Filed Oct. 14, 1931. [90]



(Title of Court and Cause.)

CERTIFICATE OF CLERK U. S. DISTRICT  
COURT TO TRANSCRIPT OF RECORD.

I, Walter B. Maling, Clerk of the District Court of the United States, in and for the Northern District of California, do hereby certify the foregoing 90 pages, numbered from 1 to 90, inclusive, to be a full, true and correct copy of the record and proceedings as enumerated in the praecipe for record on appeal, as the same remain on file and of record in the above-entitled suit, in the office of the Clerk of said court, and that the same constitutes the record on appeal to the United States Circuit Court of Appeals for the Ninth Circuit.

I further certify that the cost of the foregoing transcript of record is \$14.30; that the said amount was paid by the defendant and appellant, and that the original citation issued in said suit is hereto annexed.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court this 26 day of October, A. D. 1931.

[Seal]                      WALTER B. MALING,  
Clerk, United States District Court for the North-  
ern District of California. [91]

## CITATION ON APPEAL.

United States of America,—ss.

The President of the United States of America to

The United States of America, GREETING:

YOU ARE HEREBY CITED AND ADMONISHED to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein William L. Hughson is appellant and you are appellee, to show cause, if any there be, why the decree or judgment rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable HAROLD LOUDERBACK, United States District Judge for the Northern District of California, this 16th day of September, A. D. 1931.

HAROLD LOUDERBACK,

United States District Judge.

[Endorsed]: Filed Sep. 16, 1931. [92]

[Endorsed]: No. 6644. United States Circuit Court of Appeals for the Ninth Circuit. William L. Hughson, Appellant vs. United States of America, Appellee. Transcript of Record. Upon Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed October 26, 1931.

PAUL P. O'BRIEN,

Clerk of the United States Circuit Court of Appeals for the Ninth Circuit.

